DRINKING WATER BOARD
PACKET

MAY 11, 2007

SALT LAKE CITY, UTAH

AGENDA

FOR THE

DRINKING WATER BOARD MEETING

OF

MAY 11, 2007

State of Utah

Department of Environmental Quality

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF DRINKING WATER
Kenneth H. Bousfield, P.E.
Director

DRINKING WATER BOARD MEETING

May 11, 2007
1:00 p.m.
Place: DEQ's Offices
168 North 1950 West, Room 101
Salt Lake City, Utah 84116
Ken Bousfield's Cell Phone #: (80l) 674-2557

1. Call to Order – Chairman Erickson

2. Roll Call – Ken Bousfield

3. Introductions – Chairman Erickson

4. Approval of Minutes – March 2, 2007
   a) Approve Board Meeting Minutes
   b) Review Itinerary Minutes

5. Public Hearing on "Body Politic"

6. SRF/Conservation Committee Report – Vice Chairman Myron Bateman
   1) Status Report – Ken Wilde
      a) Project Priority List
      b) Loan Origination Fee and Reauthorization of Loans that have not been Closed
   2) State SRF Applications
      a) Enoch City Planning Loan (Julie)
      b) Circleville (Mike G.)
      c) Escalante Update (Karin)
   3) Federal SRF Applications
      a) Croydon Deauthorization (Ken W.)
      b) Portage Additional Funding (Julie)
      c) Erda Acres Special Service District (Karin)

7. Authorization to Proceed with Rule Adoption – 2/LT2/LT1 – Patti Fauver

8. Mountain View Community Park Penalty Revision – Patti Fauver

9. Status on the Antimony Variance for the Town of Alta – Ken Bousfield

10. Chairman's Report – Chairman Erickson

11. Directors Report
    a) Division Reorganization – insert
    b) Division Planning Retreat
    c) Division Budget Issues – insert
    d) Division's Work with Lorna Rosenstein Regarding Fluoride – insert
    e) 2007 DWSRF Capitalization Grant Application and Intended Use Plan - insert

12. News Articles

13. Letters

14. Next Board Meeting:
    Date: July 13, 2007
    Tour: Central Iron County Regional Tour
    Tour: 9:00 a.m. - Board Meeting: 1:00 p.m.
    Address to Meet for the Tour and Board Meeting:
    Heritage Center
    Festival Hall
    105 North 100 East
    Cedar City, Utah 84720
    Contact: Nyman
    Phone: (435) 865-2896
    Time: 9:00 a.m.
    Lunch: Cedar Creek Restaurant
    86 South Main Street
    Cedar City, Utah 84720
    Phone: (435) 586-6311
    Reservations Under: Division of Drinking Water

15. Other

16. Adjourn

In compliance with the American Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Jennifer Burge, Office of Human Resources at: (801) 536-4413, TDD (801) 536-4424, at least five working days prior to the scheduled meeting.

AGENDA 9

STATUS ON THE ANTIMONY VARIANCE FOR THE TOWN OF ALTA

FOLLOWING IS THE INFORMATION RECEIVED FROM MARK HAIK

FOR THE

DRINKING WATER BOARD MEETING

ON MAY 11, 2007

ALBION BASIN ANNEXATION

Albion

ORDINANCE NO. _____

POLICY DECLARATION OF
THE TOWN OF ALTA

WHEREAS, the Town Council heretofore resolved to propose the adoption by the Town of Alta of a Policy Declaration pursuant to the provisions of Section 10-2-414, Utah Code Annotated (1953), as amended; and

WHEREAS, the Town of Alta scheduled a public hearing on said proposal for 10:00 o'clock A.M. on July 16, 1981, at the Alta Community Center in Alta, Utah, and gave and published notice thereof, all as required by the provisions of Section 10-2-414, Utah Code Annotated (1953), as amended; and

WHEREAS, the Town Council of Alta conducted the public hearing as scheduled on July 16, 1981, at the time and place scheduled;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of Alta that the "Policy Declaration" proposed, as provided by and pursuant to the provisions of Section 10-2-414, Utah Code Annotated (1953), as amended, be and the same is hereby adopted and approved with respect to the area herein referred to and as delineated on the attached map.

POLICY DECLARATION

WHEREAS, the Town of Alta (hereinafter the "Town") is a duly constituted municipality under the laws of the State of Utah, having its situs in Little Cottonwood Canyon, Salt Lake County, State of Utah; and

WHEREAS, the State of Utah has enacted certain legislation which provides that a municipality, prior to annexation of any territories outside its corporate limits, must adopt a policy declaration stating its willingness to annex said property; and

WHEREAS, the unique environment of the Little Cottonwood Canyon area, both in its use as a recreational area and in its use as the major watershed area requires that all urban development be carefully planned and constructed so that the delicate balance of nature can be protected and preserved; and

WHEREAS, the nature of the Canyon area necessitates that all urban development must occur within the established municipalities in order that the essential municipal services may be provided in such a way as to minimize the damage to the environment, as well as maximize the protection of the health, safety and welfare of the residents of the Canyon area and the Salt Lake Valley; and

WHEREAS, the Town of Alta wishes to encourage development within municipal boundaries rather than allowing urban development on the periphery of said municipality;

1. Declaration of Policy. The Town of Alta hereby declares that the urban development of any of the properties which lie adjacent to the Town of Alta, as described on the attached map (Exhibit "A") would severely impact the Town and that it would be in the best interests of the residents of the Town, as well as the owners, developers and ultimate users of said adjacent properties if such area, all of which lies contiguous to the corporate limits of the Town, as shown on Exhibit "A", were annexed to the Town. The Town hereby adopts a policy favoring the extension of its boundaries so as to include the area designated on Exhibit "A" and herewith announce its willingness to do so, according to the procedures set forth in Section 10-2-401, et seq., Utah Code Annotated (1953), as amended.

2. Criteria for Annexation. The Town further declares that such annexation must be according to the procedures for annexation established by the ordinances of the Town, to wit: that all annexations must be reviewed by a public hearing before official Town Council action is taken.

In addition, the Town of Alta favors annexation of the area designated in Exhibit "A" (or portions thereof) only upon the following criteria:

(a) That this area has been determined to be an island or peninsula, since access to the area is completely cut off by the Town of Alta and said area cannot be serviced except through the Town of Alta because of geographic and other limitations. The area is surrounded by more than two (2) sides by the Town of Alta and the remaining boundary is determined to be the ridge line in the Canyon.

(b) That the area presently undeveloped would be master planned in keeping with the rules and regulations of the Town of Alta, with all rights and privileges enjoyed by the residents of the Town of Alta.

3. Annexation Standards. With respect to the annexation standards set forth in Section 10-2-401, et seq., Utah Code Annotated (1953), as amended, the Town declares as follows:

(a) The property here favored for annexation is contiguous to the Town.

(b) The property lies within the area projected for municipal expansion under this Policy Declaration.

(c) The property is not presently within the boundaries of another incorporated municipality.

(d) Such annexation will not create an unincorporated "island" as that term is defined.

(e) Such property presently contains no urban development, as that term is defined in Section 10-2-104, Utah Code Annotated (1953), as amended. Therefore, the favored annexation would not result in a loss of revenues to Salt Lake County greater than the costs of services now being provided by Salt Lake County, which costs would be assumed by the Town of Alta.

(f) That such favored annexation is not and would not be for the sole purpose of increasing revenues to the Town.

4. Character of Community. The Town states that its boundaries lie within an area of the County which supports a unique and sensitive environmental balance. It is the policy of the Town to foster and enhance the beneficial existence of development and nature. Such requires careful growth and improvement. Because of the nature of the location of the Town, it is subjected to unusual problems with respect to avalanche control and the protection of the people from avalanche danger, as well as traffic control problems and uninhibited passage on the road that would service this area. These problems include snow removal and the control of parking.

The character of the community is residential and mountain recreational, with attendant service-related businesses. The community and the surrounding communities

in the unincorporated territory which the Town favors annexing, require the delivery of intense, high quality, cost-effective municipal-type services.

5. Need for Municipal Services. The Town of Alta presently owns, operates and maintains a sanitary disposal system in the form of a dumping station connected to the Town sewer system. In addition, the Town provides police and fire protection to its residents, an avalanche warning and protection system and planning and zoning services. All such services are absolutely essential for any urban development within the area proposed, given the location of the area involved and the fact that the same lies within the watershed of Salt Lake City. All such services would be available to the area proposed for annexation. The Town recognizes that certain portions of the area anticipate obtaining such services from Salt Lake County. However, such would result in an unnecessary duplication of services and an inefficient use of resources, which would severely impair the programs now in operation. The Town declares that it can provide the necessary services in the most beneficial, economic and efficient manner to the subject properties and that providing the services by alternate means is not within the public and environmental interests.

6. Timetable. All of the municipal services described above shall be available to the territory set forth in Exhibit "A" immediately upon annexation. Increased police patrols and fire prevention efforts will occur following annexation finalization. Sewer services, as described above, shall be provided as such area is developed. The existing sewer facilities are, or can be made, adequate to provide services to the annexed territory.

The subject area has been serviced by the Town of Alta for several years by fire and police protection, avalanche warning, 911 emergency communications, library, and sewage disposal through the Town dump station.

7. Financing of Services. All services above-described are financed, and would be financed, through appropriations from the general fund. Any sewer and water improvements required by future development, according to the established policy of the Town, are financed wholly from the funds of the affected developer or owner, through connection and development fees.

8. Estimate of Tax Consequences. It is not anticipated that the favored annexation will cause any adverse tax consequences to residents in the Town or in the area annexed, except that there will be a slight reduction in general services to the residents in the present Town as the general services are expanded into the newly annexed territory. It is anticipated that the residents in the territory to be annexed will experience an increase in their property tax by the amount of the Town's mill levy. The Town's current mill levy is 16.0 mills and the County's mill levy is 5.2 mills, therefore a 10.8 mill levy increase to the subject area will occur.

This increase will be offset by a reduction of the sewer disposal fee of $.03 per gallon in unincorporated areas to the Town's rate of $.0075 per gallon. (The estimated annual use is 2,000 gallons per residence.) There will be an elimination of the $20.00 per year contribution for the Alta Central Services rendered to the subject area.

It is estimated that the County unincorporated tax (i.e. 5.2 mills) generates less than $2,000.00 per annum; assessed values provided by Salt Lake County Assessor's Office

total $218,215.00. The proposed annexation will not cause any increased tax burden on the Town residents. (see Exhibit "B")

Persons in the newly annexed territory will probably experience reductions in their fire insurance rates from Class 10 to Class 7 and in property insurance rates.

9. Area. Acreage: Private real property is 38.65 acres, and the balance of the area is owned by the United States Government, managed by the Forest Service. Estimated amount of acreage is 925 ± acres.

10. Interests of Affected Entities. The only other "affected entity", as that term is defined in Section 10-1-104(8), Utah Code Annotated (1953), as amended, is Salt Lake County. The interests of that entity have been fully set out herein. In general, it is foreseen that the loss in tax revenues will be offset by the decrease in cost of services to the area here favored for annexation. Therefore, there will be no overall effect on Salt Lake County.

11. Other Considerations. The Town of Alta hereby declares that the annexation favored herein will allow the continuation of the high quality of urban governmental services to the area in question and will provide for the protection of the public health, safety and welfare. Such policy is further necessary in order to insure the environmental balance of the location of the property and to enhance the quality of life of the residents of Little Cottonwood Canyon without inhibiting the enjoyment of the public land by the citizens of the Salt Lake Valley, the State of Utah and the nation.

IN WITNESS WHEREOF, the Town Council of the Town of Alta, Utah, has duly approved, adopted and passed this Ordinance at a regular meeting on the day of

1981, and further declares that the immediate preservation of the peace, health and safety of the Town requires that this Ordinance become effective immediately. This Ordinance shall become effective immediately upon the posting thereof by the Town Clerk in at least three (3) conspicuous places within the Town limits.

By William H. Levitt
WILLIAM H. LEVITT
Mayor

ATTESTED:

Katherine Lee Black
Town Clerk

Date of Posting:

7-16-81

CAHILL CONTRACT
CEDAR LODE CLAIM

Presented to the Board of Commissioners
AND APPROVED

DEC 18 1979

Mildred V. Higham
CITY RECORDER

0 01

APPLICATION FOR WATER

On the 18th day of December, 1979 JOHN D. CAHILL, hereinafter referred to as "Applicant" hereby made application to SALT LAKE CITY CORPORATION, acting by and through the DEPARTMENT OF PUBLIC UTILITIES of Salt Lake City, Utah, hereinafter referred to as "City", to use water to serve the Cahill single family home water issuing from springs in Little Cottonwood Canyon, further described below not more than 200 G.P.D., or so much thereof as Applicant shall be able to put to beneficial use, for culinary purposes only during such time as the Applicant shall desire the same and during such time as the water so used is surplus water and not needed within the boundaries of Salt Lake City and is available for use outside the limits of said City. Said water is to be used to supply water for one cabin or building on the following described property to wit:

All of that part of the Cedar Claim No. 117 located Southeasterly of the road in the Northwest Quarter, Section 4, Township 3 South, Range 3 East, Salt Lake Base and Meridian. The spring and reservoir from which said water shall be drawn for said cabin being located South 400 feet more or less and East 750 feet more or less from the Northwest corner of said Section 4, Township 3 South, Range 3 East.

THIS APPLICATION IS MADE UPON THE FOLLOWING ADDITIONAL CONDITIONS:

(1) Said water is to be conducted by the Applicant from said springs in Little Cottonwood Canyon and pumped or drawn through pipelines to be constructed by Applicant. The cost of construction, maintenance and repair of any and all pipelines, tanks or pumps constructed shall be borne by Applicant and the City shall have no obligation whatever to deliver said water or any part thereof to Applicant or to any of their lessees, assigns or grantees. Applicant shall keep said pipelines, tanks and/or pumps in an efficient state of repair at all times, in order that water is conducted therein so as to prevent loss and waste of water. Each water user shall install a valve at a convenient point near his property line so that water can be shut off and service discontinued. It is expressly understood and agreed that the Applicant shall not make any extension of any pipeline beyond the said boundaries described above or take water beyond such area without permission of the City.

A0023

(2) The Applicant shall pay to said City the sum of $25.00 annually for each such house, cabin or lot shown on said agreement. Provided, however, that the $25.00 per year as herein agreed is subject to proportionate increase as may be imposed by the City on its resident water users. Should water be delivered for use in any house, cabin or lot within the boundaries of the above-described premises in any year in addition to those shown on such statement, the Applicant shall immediately advise the City of the same and its location and pay the sum of $25.00 therefor. The payment of said $25.00 per house, cabin or lot per year, as aforesaid, shall constitute payment in full for the use of said water each year. Said payment shall be made on or before July 1.

(3) The use of water shall be limited to domestic use only and shall not be used for irrigation or sprinkling.

(4) The Applicant takes said water as to quality, purity, quantity and potability as the same emerges from said springs, and the City is under no obligation to render the same fit or suitable for human consumption, and the Applicant shall comply with all state and county health regulations for such water and sewage facilities.

(5) IT IS UNDERSTOOD AND AGREED THAT said City may terminate this application use of water hereunder and thereafter take all of said water or any part thereof at any time it in its sole judgment requires the use of the water covered hereunder for use within the boundaries of Salt Lake City or for any other reason, and that the City shall not be liable in any manner or to any extent to anyone whomsoever for damages which may accrue or be claimed by Applicant, or any other person, by reason of the retaking of said water or any part thereof by the said City. So far as practicable, the City shall notify Applicant by written notice ten (10) days in advance of such termination of its intention to terminate and take said water, such notice to be served either by being served personnally or deposited in the United States mail, addressed to the last known place of residence of the said Applicant, as shown on the records of the Department of Water Supply & Waterworks of Salt Lake City.

(6) IT IS UNDERSTOOD AND AGREED THAT the Director of the Department of Public Utilities of Salt Lake City may terminate the use of water hereunder for non-payment of water bills or for violation of the sanitary regulations or ordinances of the Salt Lake City Watersheds in effect during the term of this application.

John D Cahill

THE FOREGOING APPLICATION ACCEPTED THIS 18th DAY OF December, 1979.

SALT LAKE CITY CORPORATION

By _____
MAYOR

ATTEST:

Mildred V. Higham
CITY RECORDER

STATE OF UTAH)
ss.
County of Salt Lake)

On the 6 day of Nov, 19 79, personally appeared before me John D Cahill, the signer(s) of the above instrument, who duly acknowledged to me that he executed the same.

Nan Jebbington

NOTARY PUBLIC
Residing in Salt Lake County, Utah

My Commission expires:
9-14-83

STATE OF UTAH)
ss.
County of Salt Lake)

On the 18th day of December, 1979, personally appeared before me TED L. WILSON and MILDRED V. HIGHAM, who, being by me duly sworn, did say that they are the Mayor and City Recorder, respectively, of Salt Lake City, a municipal corporation of the state of Utah, and that said instrument was signed in behalf of said corporation by authority of a motion of its Board of Commissioners passed on the 18th day of December, 1979; and said persons acknowledged to me that said corporation executed the same.

A 0025

Katherine L Basanich

My Commission expires:
1-9-83

NOTARY PUBLIC
Residing in Salt Lake County, Utah

HAIK VS SALT LAKE TOWN
ALTA TOWN
JENKINS DECISION

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

* * * * * * * * *

RAYMOND A. HAIK and MARK C. HAIK, Plaintiffs, vs. THE TOWN OF ALTA, a political subdivision of the State of Utah, and SALT LAKE CITY CORPORATION, a political subdivision of the State of Utah, Defendants.	Civil No. 2:96-cv-732J **MEMORANDUM OPINION AND ORDER**

* * * * * * * * *

Plaintiffs Raymond A. Haik and Mark C. Haik ("Haiks") commenced this action to redress an alleged denial of equal protection of the law by the Town of Alta ("Alta"). The Haiks own unimproved parcels of land located within the Albion Basin and within Alta's municipal limits. They contend that Alta owes a legal duty to extend municipal water service to their lots, notwithstanding the terms of the Water Supply Agreement between Alta and co-defendant Salt Lake City requiring Alta to obtain Salt Lake City's approval prior to extending additional water service to private landowners. Without municipal water service, the Haiks further assert, they are unable to obtain the building permits required to construct dwellings on their lots. If Alta's refusal to extend water service is somehow sustained, the Haiks contend that they are then entitled to just compensation for a "taking" of their property.

On November 27, 1996, plaintiffs filed a Motion for Partial Summary Judgment (dkt. no. 17). On January 22, 1997, defendants Alta and Salt Lake City filed their memoranda in

53

opposition to plaintiffs' motion (dkt. nos. 19, 22), as well as their own cross motions for summary judgment (dkt. nos. 18, 21), accompanied by supporting affidavits (dkt. nos. 20, 23, 24). Alta also filed a motion to strike certain exhibits annexed to plaintiffs' motion papers as unauthenticated documents (dkt. no. 25). The Haiks filed their response/reply memoranda on March 19, 1997 (dkt. nos. 31, 32, 33), and on April 9, 1997, Alta and Salt Lake City filed their reply memoranda (dkt. nos. 34, 36), together with a supplemental affidavit (dkt. no. 35).

On April 25, 1997, these motions were heard by the court. At that time, the court requested the submission of additional data concerning water availability and took all motions under advisement. In the weeks thereafter, the parties filed a series of papers--submission and objections, reply and "sur-reply" (dkt. nos. 41, 42, 43, 44, 46, 50, 52).

Having reviewed the motions, memoranda, affidavits, submissions, objections, replies and sur-replies, and having considered the arguments of counsel, the court now rules as follows:

Factual Background[1]

Albion Basin is located above the Alta and Snowbird ski resorts at the top of Little Cottonwood Canyon, east of Salt Lake City, and comprises part of the watershed relied upon by Salt Lake City and other Salt Lake Valley communities for their culinary water supply.

In 1963, Canyonlands, Inc., an apparent predecessor in interest to plaintiffs, entered into a contract with the Little Cottonwood Water Company which promised the availability of not more than 50 gallons per day to users in each of not more than 35 cabins to be constructed in the Albion Basin Subdivision #1.

---

[1] The parties' respective statements of facts recount this history in detail, supported by affidavits and buttressed by hundreds of pages of exhibits. The following offers only a brief summary of the stated facts.

Prior to 1971, land ownership in the Albion Basin was relatively free of county zoning regulations. In 1966, Salt Lake County had adopted a uniform zoning ordinance governing unincorporated areas of the county, and in November 1971, the county for the first time sought to limit building in the Albion Basin through an amendment to the 1966 ordinance. The amendment provided that no dwelling could be erected on less than fifty acres of land. This amendment followed on the heels of applications for building permits that had been filed by Albion Basin Subdivision landowners who wished to construct four-plex housing units on their lots.

Marvin and Renee Melville, together with other Albion Basin Subdivision landowners, challenged the amendment in district court as being arbitrary, capricious, and unlawfully enacted. The first time around, the Melvilles prevailed; in 1975, the Utah Supreme Court struck down the 1971 amendment, holding that "when a zoning regulation is to be applied to unzoned land, it must be done after notice has been given four times by publication and not under the guise of an amendment." *Melville v. Salt Lake County*, 536 P.2d 133 (Utah 1975).

On August 4, 1975, Salt Lake County enacted another zoning ordinance, this one restricting construction in the Albion Basin to one single family cabin per subdivision lot. In May of 1976, a second trial was conducted in the *Melville* litigation on the plaintiffs' fourth cause of action seeking writs of mandamus compelling the issuance of building permits for the plaintiffs' proposed four-plex units. Plaintiffs did not prevail in the district court because they failed to show that any company or person, including Marvin Melville, had the right to use sufficient water in Little Cottonwood Canyon to supply the 400 gallons per day per unit that was required by the Salt Lake County Board of Health before a building permit could issue. On appeal, the Utah Supreme Court affirmed, concluding that "[a]t most plaintiffs have proved that they *may* have a

right to 50 gallons of water per unit constructed, which does not meet the County Board of Health's requirement of 400 gallons per unit per day." *Melville v. Salt Lake County*, 570 P.2d 687, 689 (Utah 1977) (emphasis in original).[2]

Meanwhile, on August 12, 1976, Salt Lake City entered into the INTERGOVERNMENTAL AGREEMENT—WATER SUPPLY AGREEMENT SALT LAKE CITY TO ALTA CITY ("Water Supply Agreement"). Reciting that Salt Lake City "owns and/or controls the major portion of the primary waters of Little Cottonwood Canyon for the use and benefit of Salt Lake City residents, some of which, at this time, can be made available to Alta," the Water Supply Agreement provides that Salt Lake City "agrees to make available to Alta for its use, as hereinafter described, the normal flow of raw, untreated water, not to exceed 265,000 gallons per day." *Id.* at ¶1. Alta's "use, as hereinafter described," includes the following express limitation:

> 8. It is expressly understood and agreed that said pipelines shall not be extended to or supply water to any properties or facilities not within the present city limits of Alta without the prior written consent of [Salt Lake] City.

Id. at ¶ 8. It is uncontroverted that in 1976, Albion Basin Subdivision # 1 lay beyond the city limits of Alta. Moreover, the Water Supply Agreement recited that "Alta recognizes [Salt Lake] City's need to protect its watershed and specifically agrees to be bound by and comply with all City water ordinances, applicable County ordinances, Salt Lake City-County Board of Health regulations and applicable state law." *Id.* at ¶ 12. It also appears uncontroverted that in 1976, "applicable County ordinances" limited construction in the Albion Basin Subdivision #1 to one

---

[2] The court also concluded that plaintiffs failed to show that they had lawfully appropriated the water flowing from a spring flowing from the portal of the old Alta-Helena Mine, located on Marvin Melville's Albion Basin property, and likewise failed to establish that they owned the spring waters as "percolating water"arising on the Melville property under *Riordan v. Westwood*, 115 Utah 215, 203 P.2d 922, 929, 930 (1949). The spring produced water at a rate of 20 gallons per minute, which a health department official testified was adequate to supply the proposed four-plexes with the required 400 gallons of water per unit per day. 570 P.2d at 688-89.

single family cabin per subdivision lot, which the Board of Health required to be supplied with 400 gallons of water per day as a precondition to issuing a building permit.

Following the Utah Supreme Court's denial of the mandamus remedy in 1977, Marvin Melville made repeated requests to Salt Lake City for water to supply his Albion Basin property. Those requests were consistently refused, and it appears that Melville never succeeded in obtaining a building permit for his Albion Basin property or commencing construction of the proposed dwellings.

In 1981, Alta undertook to annex the Albion Basin Subdivision, which was accomplished by an August 20, 1981 resolution following a July 16, 1981 public hearing.[3] Thereafter, Alta conditioned issuance of building permits in the Albion Basin upon "approval of all uses, regardless of the size or number of units" given "in writing by the Salt Lake City-County Health Department, who shall certify as to the adequacy of the culinary water system and the sewage system." The approval of culinary water and sewer systems "shall be in accordance with the regulations of the Salt Lake City-County Health Department and the Utah State Division of Health." Town of Alta Uniform Zoning Ordinance, § 22-7-8(2) (1989).[4] The regulations referred to by the Alta ordinance continue to require the availability of 400 gallons of water per day per housing unit to be constructed. *See* Utah Admin. Code § R309-105-1 (1.2.6) (1997).

In 1983, Alta requested an amendment to the Water Supply Agreement, authorizing an extension of water service to the newly annexed Albion Basin properties. Salt Lake City,

---

[3] Annexation was supported by, among others, Marvin Melville. *See* Affidavit of Mayor William H. Levitt, dated January 21, 1997 (dkt. no. 23), at ¶ 22. Melville now avers that he "agreed to the annexation on the belief that Alta would provide all city services to my property." Affidavit of Marvin Melville, dated March 5, 1997, at ¶ 5.

[4] *Id.* at ¶ 26.

however, declined to consent to the proposed amendment. In 1988, however, Salt Lake City adopted a Watershed Management Plan and consented to Alta's use of water for snowmaking within Alta's city limits, which by 1988 included land within the Albion Basin area.

In 1988, Alta, Salt Lake City, and other government entities commenced discussion of acquiring private lands in the Albion Basin area for public use, and began developing acquisition strategies toward that end. Salt Lake City also entered into discussions with the Little Cottonwood Water Company in 1988 that culminated in Salt Lake City succeeding to the company's obligations under various water supply contracts, including the 1963 agreement affecting Albion Basin Subdivision #1, following the dissolution of the company in 1994.

In April 1991, the Salt Lake City Council adopted a Watershed Ordinance, § 17.04.020.A, B(1) of the Salt Lake city Ordinances, which, *inter alia*, prohibits the city from entering into any new water sales agreements or expanding any existing agreements, with three exceptions:

(a) water sales for residential use to property owners with a spring on the property;

(b) water sales to governmental entities for use on land they own or lease; or

(c) water sales for snowmaking and fire protection in certain cases.

In 1992, pursuant to the 1991 ordinance, Salt Lake City agreed to supply water to the U.S. Forest Service for recreational purposes at several locations, including the Albion Basin campground. In 1993, Salt Lake City gave consent to use of additional water for snowmaking by the Alta Ski Lifts Company. In 1995, Salt Lake City also consented to the extension of Alta's municipal water lines to an expanded Alpenglow lodge facility, which purportedly falls within the 1976 city limits of Alta and therefore within the terms of the 1976 Water Supply Agreement.

In November, 1992, Alta prepared a General Plan for the Town of Alta. The General Plan

identifies Albion Basin as a "high priority" area for the acquisition by Alta of privately-owned lands and recommends that "no future development be allowed in areas not served by a public sewer system," presumably including Albion Basin Subdivision #1. In September, 1994, Alta executed a Memorandum of Understanding with the U.S. Forest Service acknowledging that "a majority of the private land which exists in Albion Basin is presently undeveloped," that "development rights are affected by current laws and ordinances," and that "some properties lack water rights necessary for development," and endorsing "the public acquisition of land in the Albion Basin."

A month later, in October 1994, the Haiks stepped into this milieu by purchasing Lots 25, 26, 29 and 30 of Albion Basin Subdivision #1 from Marvin Melville.

In a November 29, 1994 response to Raymond Haik's written inquiry concerning water and sewer services, Alta informed Haik that Alta does not provide water and sewer services to the Albion Basin Subdivision and referred him to the Salt Lake City Department of Public Utilities, Water Division. Upon inquiry by the Haiks, Salt Lake City in 1996 declined to consent to the extension of Alta water pipes and water supply to the Haiks' lots, relying on Paragraph 8 of the 1976 Water Supply Agreement and the 1991 Watershed Ordinance, § 17.04.020 of the Salt Lake City Ordinances.

In October, 1997, three years after their purchase, the Haiks continue to own Lots 25, 26, 29 and 30 of Albion Basin Subdivision #1, and continue to be unable to build on those lots because of the lack of culinary water supply that remains a legal prerequisite to the construction of dwellings on the property.

I. The Haiks' Equal Protection Claims Against Alta

As the Ninth Circuit pointed out in *Lockary v. Kayfetz*, 917 F.2d 1150 (9th Cir. 1990),

> The interest in water for real estate development is not a fundamental right. *Bank of America Nat'l Trust and Savings Ass'n v. Summerland County Water Dist.*, 767 F.2d 544, 548 (9th Cir. 1985). Unless a classification trammels fundamental personal rights or implicates a suspect classification, to meet constitutional challenge the law in question needs only some rational relation to a legitimate state interest. *City of New Orleans v. Dukes*, 427 U.S. 297, 303-04, 96 S.Ct. 2513, 2516-17, 49 L.Ed.2d 511 (1976). . . .
>
> However, the rational relation test will not sustain conduct by state officials that is malicious, irrational or plainly arbitrary. . . .

917 F.2d at 1155 (citation omitted). In this case, the Haiks contend that Alta, by refusing their requests to extend water service to the Haiks' Albion Basin properties, has acted in arbitrary and irrational fashion and has thereby denied the Haiks equal protection of the laws. The Haiks' contention presupposes the existence of a legal duty on the part of Alta to supply water to property owners such as the Haiks, as well as the legal and physical capacity to do so.

A. The Municipal Duty to Supply Water

In *Rose v. Plymouth Town*, 110 Utah 358, 173 P.2d 285 (1946), the Utah Supreme Court held that mandamus did not lie to compel town authorities to extend their municipal water system to plaintiff's residence located within the town's geographical limits where such extension could be accomplished only at considerable expense. "Unless the town authorities are shown to have failed to exercise judgment or discretion such that a refusal to extend the water system would be unreasonable their decision is final." 173 P.2d at 287. In dictum, Chief Justice Larson observed,

> If this were a case where the town authorities had refused to connect the plaintiff's residence to a main already laid or if the plaintiff had financed the cost of the extension and agreed to accept water at the prescribed rates in payment therefor, the remedy might lie, because the writ would then be for the purpose of compelling the town *to perform a duty, a ministerial act about which it would have no*

> *discretion.* But such is not this suit. The effort here is to compel the extension of the water system a considerable distance under circumstances which call for reason and judgment and the exercise of discretion and are not ministerial.

Id. (emphasis added).

Child v. City of Spanish Fork, 538 P.2d 184 (Utah 1975), rejected a claim that a municipality's requirement that landowners in a newly annexed area convey shares of water in exchange for annexation was arbitrary, unreasonable, and a denial of equal protection. Agreeing with the district court that the requirement "represented prudence in planning for the City's needs," the Utah Supreme Court upheld the requirement as being wholly within the city's powers and not "in any degree unreasonable or arbitrary," and rejected plaintiffs' assertion that the city should fund the acquisition of additional water through a bond issue. 538 P.2d at 186-87. Rejecting the new annexees' claim of unequal treatment as compared to existing residents who made no conveyance of water rights, the court observed that "different treatment of individuals does not necessarily violate the equal protection of the laws assurances." Persons may be treated differently by the law "if the classifications have a reasonable relationship to a proper and lawful purpose, and if all persons within the same class are treated equally." *Id.* at 187. The *Child* court concluded that "the treatment of all of the plaintiffs as a class seeking annexation is for a proper and lawful purpose; and . . . all of the persons in that class are treated equally." *Id.*

Similarly, *Thompson v. Salt Lake City*, 724 P.2d 958 (Utah 1986), involved another effort to compel a municipality to provide water service. By ordinance, Salt Lake City conditioned water service upon agreement by the landowner to be responsible for payment for all water provided to his property. Lessees sued to obtain water service where their lessor refused to sign such an agreement, asserting that the city had a duty to provide water service and that the

condition requiring landowner agreement was "arbitrary, unreasonable, and discriminatory," and denied equal protection of the laws. Once again the Utah Supreme Court denied relief, holding that although they are authorized to provide water service, municipalities are not public utilities and do not "have a legal duty to provide water service to all members of the public . . . ." The court upheld the ordinance on the grounds that (1) the ordinance tracked a state statute authorizing municipalities to require property owners to be responsible for payment for water service (*see* Utah Code Ann. § 10-7-10 (1973)); (2) the ordinance placed "all property owners in the same class and treat[ed] them equally"; (3) the ordinance imposed the payment obligation on "the most logical and reasonable persons to bear that responsibility" and thus represented "the most effective means of insuring payment for water service"; and (4) the ordinance did not discriminate against tenants. "The ordinance therefore encompasses a legitimate purpose and objective and does not create an unconstitutional classification to achieve that objective." 724 P.2d at 959, 960.

At the outset, the Haiks acknowledge that, consistent with *Thompson*, Alta was not and is not designated as a public utility,[5] and "[h]ence, it does not have a legal duty to provide water service to all members of the public." *Thompson*, 724 P.2d at 959. Yet "[e]ven a municipality," the Haiks submit, "cannot arbitrarily choose to supply water to certain residents while denying it to others."[6]

[illegible]se, *Thompson*, and *Child*, the Haiks assert, "make clear that a municipality may refuse

---

5 Memorandum in Support of Plaintiffs' Motion for Partial Summary Judgment, filed November 26, 1996 (dkt. no. 15) ("Pltfs' Mem."), at 6.

6 Reply Memorandum in Support of Plaintiffs' Motion for Summary Judgment, and Memorandum in Opposition to Defendants' Cross-Motions for Summary Judgment and Defendant Town of Alta's Motion to Strike, filed March 19, 1997 (dkt. no. 32) ("Pltfs' Reply/Opp. Mem. (Alta)"), at 9.

water service to residents for economic reasons. No such economic justification for refusing water service to the Haiks exists here, however." Pltfs' Reply/Opp. Mem. (Alta) at 10. The Haiks urge that they remain entirely willing and able to fund the extension of water lines to their property, thus eliminating the kind of economic impediment that justified municipal inaction in *Rose*, *Thompson*, and *Child*. "[W]here the Haiks have offered to pay the costs of the extension, and Alta has available sufficient water," the Haiks conclude, "Alta's obligation to provide water to the Haiks' lots is 'a ministerial act about which it [has] no discretion.'" Pltfs' Reply/Opp. Mem. (Alta) at 10-11 (quoting *Rose*, 173 P.2d at 287).

Yet it does not follow from *Rose*, *Thompson*, or *Child* that economic considerations are the *only* valid reasons that may justify declining to extend municipal water service to particular property. The Haiks' argument presupposes that "Alta has available sufficient water," which in this case turns on considerations of legal right and the exercise of lawful power.

While Utah law empowers municipalities to "construct, maintain and operate waterworks" by statute, *see* Utah Code Ann. § 10-8-14 (1996), a town does not gain any entitlement to ownership or use of any water simply by virtue of the town's existence. Counties, cities and towns have no "reserved right" to enough water to supply the needs of their constituents. Water to be supplied through a municipal water system must be acquired through lawful means as outlined in the statute. *See* Utah Code Ann. § 10-7-4 (1996); *Child*, 538 P.2d at 186 (consistent with the statute, a city may acquire water resources by purchase, lease, condemnation, gift, assignment, "or even by prescriptive use or easement").

Ownership of land, without more, likewise does not entitle a private landowner to use water that flows across, under or nearby that land. Instead, the Legislature decreed long ago that

"[a]ll waters in this state, whether above or under the ground are hereby declared to be the property of the public . . . ." Utah Code Ann. § 73-1-1 (1989). As the Utah Supreme Court explained in the second *Melville* opinion, "No one owns or can own water in this state . . . . One can only acquire the right to use the water. One's right to use the water is measured by the amount he puts to beneficial use without interfering with another person's prior right to the use of the water." 570 P.2d at 688. In Utah, rights in land and rights to water arise separately and are legally distinct from each other. Ownership of one does not necessarily confer a right to the other. A municipality, like a private landowner, must acquire its water in the manner prescribed by law. *See Mt. Olivet Cem. Ass'n v. Salt Lake City*, 65 Utah 193, 235 P. 876, 879 (1925) (neither the city's ownership of land in Emigration Canyon nor its exercise of regulatory police power established proprietary right to use water).

B. Alta's "Capacity" to Supply Water

The waters of Little Cottonwood Canyon have been subject to extensive prior appropriation for years, indeed, for many years before the events concerning the Albion Basin transpired as recounted above. *See generally Little Cottonwood Water Co. v. Sandy City*, 123 Utah 242, 258 P.2d 440 (1953) (surface waters of Little Cottonwood Canyon fully appropriated; groundwater appropriation disputed as impairing surface water flow). Nothing in the Haiks' pleadings suggests that any unappropriated water remains available near Alta that Alta may now put to beneficial use by extending its water system to the Haiks' Albion Basin lots.[7]

---

[7] Nor do the Haiks suggest the availability of any water that may be acquired by Alta through condemnation. It appears that Salt Lake City has acquired the water rights belonging to the former Little Cottonwood Water Co., which otherwise might have been acquired by Alta through eminent domain proceedings. *Cf. North Salt Lake v. St. Jo[illegible] Water & Irr. Co.*, 118 Utah 600, 223 P.2d 577 (1950) (municipality may acquire water rights by eminent domain from entity that provides public water service).

At this point, Salt Lake City--not Alta--appears to hold all the cards where water in Little Cottonwood Canyon is concerned. Indeed, as successor to the Little Cottonwood Water Company, Salt Lake City even has control of the water (50 gallons per day) to be supplied to dwellings in the Albion Basin Subdivision #1 under the company's 1963 agreement.[8]

Besides purchasing the Albion Basin lots from Marvin Melville, the Haiks stepped into Melville's shoes in another respect: notwithstanding the physical "availability" of sufficient water to support the construction of dwellings on their lots, they can establish no right under Utah's prior appropriation system of water rights that entitles either themselves or the Town of Alta to *use* that water for that purpose. Alta's "right" to use 265,000 gallons of water per day flows from its contractual agreement with that premier prior appropriator, Salt Lake City, who expressly conditioned Alta's right upon Salt Lake City's retained power to consent--or refuse to consent--to extensions of Alta's municipal water system beyond Alta's 1976 geographical limits.

It may be true that Alta has told others that it has "the *capacity* to supply water for 34 residential connections in addition to the approximately 190 connections it currently services," (Pltfs' Mem. at xii ¶ 45 (emphasis added)), but this physical capacity does not translate into the *legal* capacity--the right or power--to authorize or support such use, at least outside of Alta's 1976 geographical limits, because Alta's legal capacity to supply water remains circumscribed at its source, the 1976 Water Supply Agreement.

In the first instance, then, Alta cannot supply water to the Haiks beyond that which is "available" under its 1976 Water Supply Agreement with Salt Lake City. Water is not available to

---

[8] Nothing in the present record suggests that Salt Lake City has forfeited any of its rights to water in Little Cottonwood Canyon for nonuse. *See Nephi City v. Hansen*, 779 P.2d at 673, 674-76 (Utah 1989) (city's nonconsumptive water rights forfeited where rights were "unused for about thirty years").

the Haiks under the Water Supply Agreement absent Salt Lake City's consent to an extension of service beyond Alta's 1976 limits. Where Salt Lake City withholds its consent, Alta has no legal right to extend water service to the Haiks.

II. Alta's 1981 Annexation of Albion Basin

The Haiks cite to Utah Code Ann. § 10-2-401(4), which states that as a matter of legislative policy, "areas annexed to municipalities in accordance with appropriate standards should receive the services provided by the annexing municipality . . . as soon as possible following the annexation," and to § 10-2-417(3), which provides that municipalities "shall not annex territory . . . without the ability and without the intent to benefit the annexed area by rendering municipal services in the annexed area."

Paragraphs 5 and 6 of Alta's July 16, 1981 Policy Declaration referred to the intended availability of police and fire protection, avalanche warning, sewer dump station and planning and zoning services. Yet the Policy Declaration makes no express commitment to extend Alta's water system to the Haiks' property or to supply water notwithstanding the terms of the Water Supply Agreement. Paragraph 7 of the Policy Declaration simply specifies that "[a]ny sewer and water improvements required by future development, according to the established policy of the Town," will be paid for by the owner or developer affected, taking into account the *possibility* of future water availability. Affidavit of Mayor William H. Levitt, dated January 21, 1997 (dkt. no. 23), at ¶ 20.

As far as § 10-2-417(3) is concerned, this plainly was not a case of annexation solely to generate revenue. Anticipated revenue was minimal. The services referred to in the Policy

Declaration were provided.[9] *Compare Chevron U.S.A., Inc. v. City of North Salt Lake*, 711 P.2d 228 (Utah 1985) (where it is uncontroverted that city annexed property solely to gain revenue with "no ability to render services that would benefit" the annexed property, annexation properly held unlawful under § 10-2-417(3)). Sections 10-2-401(4) and 10-2-417(3) do not specify *which* municipal services the annexing authority must have the ability and intent to provide for a lawful annexation to occur; nor does the balance of the Local Boundary Commissions Act, §§ 10-2-401 *et seq.*, expressly require that water or sewer services be furnished to all annexed property, or that municipalities act immediately to further the development of annexed areas.[10]

Apart from case and statutory authority, the Haiks point to no express contractual agreement with Alta, made either in the context of annexation or otherwise, entitling the Haiks to municipal water service. Instead, the Haiks assert that Alta "became obligated to provide water in the Albion Basin by its own statements at the time of annexation." Pltfs' Reply/Opp. Mem. (Alta) at 11. According to the Haiks, the Mayor of Alta spoke of doing "everything possible to regularize the water supply in the basin," and that Alta would "try to work something out with the Water Department, as they actually have full control over the water in the canyon." *Id.* (quoting Pltfs' Exh. 11, at 2-3). "By such statements," the Haiks argue, "Alta convinced the property owners in the Albion Basin to favor annexation." *Id.* at 12.[11]

---

[9] In fact, Paragraph 6 of the Policy Declaration recited that "[t]he subject area has been serviced by the Town of Alta for several years by fire and police protection, avalanche warning, 911 emergency communications, library, and sewage disposal through the Town dump station."

[10] If anything, the Act appears to *restrict* development in newly annexed areas. *See* Utah Code Ann. § 10-2-418 (1996); *Sweetwater Properties v. Town of Alta*, 622 P.2d 1178, 1181-82 (Utah 1981). However, the parties to this proceeding have not briefed or argued the question whether § 10-2-418 affected the Haik property in any way.

[11] The Haiks also point to statements made when Mayor Levitt met privately with Albion Basin property (continued...)

The Haiks would now enforce these statements against Alta, apparently as a matter of promissory estoppel.[12] However,

> Utah recognizes the general rule precluding a party from asserting estoppel against the government. *Utah State University v. Sutro & Co.*, 646 P.2d 715, 718 (Utah 1982). This rule safeguards the interests of the public which may be jeopardized by the "vagaries of political tides, frequent changes of public officials, the possibility of collusion, or of circumventing procedures set up by law, then suing for the value of goods furnished or services rendered." *Id.* Nonetheless, we recognize an exception to this general rule in unusual circumstances "when it is plainly apparent that its application would result in injustice, and there would be no substantial adverse effect on public policy...." *Id.* The critical inquiry is "whether it appears that the facts may be found with such certainty, and the injustice to be suffered is of sufficient gravity, to invoke the exception." *Id.* at 720.

Prows v. State of Utah, 822 P.2d 764, 769 (Utah 1991).

Alta's 1981 Policy Declaration may itself have some binding force, but informal statements by the Mayor in the context of the annexation discussions do not operate as an amendment to that

---

[11](...continued)
owners, promising to "do everything possible" to allow them to build. *Id.*

[12] Though the Haiks' do not invoke promissory estoppel by name, the arguments presented in their memoranda appear to track its essential elements. As *Andreason v. Aetna Casualty & Surety Co.*, 848 P.2d 171 (Utah Ct. App. 1993), explains:

> Promissory estoppel may be invoked in circumstances where " 'equity recognizes the unfairness of permitting withdrawal of the promise and will enforce it.' " *Tolboe*, 682 P.2d at 846 (quoting *Union Tank Car Co. v. Wheat Bros.*, 15 Utah 2d 101, 387 P.2d 1000, 1003 (1964)). The necessary elements of promissory estoppel include: "(1) a *promise* reasonably expected to induce reliance; (2) *reasonable reliance* inducing action or forbearance on the part of the promisee or a third person; and (3) *detriment* to the promisee or third person." *Weese v. Davis County Comm'n*, 834 P.2d 1, 4 n. 17 (Utah 1992) (emphasis added). Utah has also adopted the Restatement (Second) of Contracts section 90 describing promissory estoppel as follows: " 'A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.' " *Tolboe*, 682 P.2d at 845 (quoting Restatement (Second) Contracts § 90(1) (1981)).

Id. at 174-75 (quoting *Tolboe Constr. Co. v. Staker Paving & Constr. Co.*, 682 P.2d 843 (Utah 1984)). "Promissory estoppel is historically rooted as a substitute for consideration, *Allegheny College v. National Chautauqua County Bank*, 246 N.Y. 369, 159 N.E. 173, 57 A.L.R. 980, per Cardozo, C. J., citing 1 Williston on Contracts, Secs. 116, 139 . . . ." *Ravarino v. Price*, 123 Utah 559, 568, 260 P.2d 570, 575 (1953).

document adding water service to the services listed in Paragraph 5. "The policy declaration, including maps, may be amended from time to time *by the governing body after at least 20 days' notice and public hearing.*" Utah Code Ann. § 10-2-414 (1996) (emphasis added). Nothing in the statute confers upon the Mayor the power to amend. Nor may the Mayor's "promise" be read into the Annexation Ordinance as a matter of "statutory construction." Pltfs' Reply/Opp. Mem. (Alta) at 13-14.

The Haiks have established no express legislative or contractual duty on the part of Alta to supply water to Albion Basin Subdivision #1. Alta cannot fairly be burdened with an implied legal duty to supply water that Alta has no legal right to use. Nor can it fairly be said that Alta has denied to any person the equal protection of its laws simply because it has failed to supply what it does not have the legal right to supply.[13]

It is Salt Lake City, not Alta, that holds the right and exercises the power.

If a duty to supply water exists, that duty must devolve upon the entity with legal right to, and lawful control of the water that may be physically available to the Haiks' property--Salt Lake City.

III. Salt Lake City and "Prior Written Consent" to the Extension of Water Service

The Haiks assert no duty on the part of Salt Lake City to supply water to the Albion Basin property. Albion Basin lies beyond the Salt Lake City limits. While the statute provides that a city operating a waterworks "may sell and deliver the surplus product or service capacity of any such

---

[13] The general duty imposed upon municipalities by Article XI, § 6 of the Utah Constitution, *viz.*, that "all such waterworks, water rights, and sources of water supply now owned or hereafter to be acquired by any municipal corporation, shall be preserved, maintained and operated by it for supplying its inhabitants with water at reasonable charges," presupposes that the water to be supplied to inhabitants has already been lawfully acquired by the municipality.

works, not required by the city or its inhabitants, to others beyond the limits of the city," Utah Code Ann. § 10-8-14(1), a city plainly is not required to do so.[14] In fact, the Haiks concede that as a matter of contract, Salt Lake City may refuse consent to an extension of water service by Alta pursuant to the Water Supply Agreement, at least so long as such refusal is "reasonable" and not "arbitrary" or "capricious."

The Haiks contend that they are entitled to test the reasonableness of Salt Lake City's refusal to consent as "taxpaying property owners of Alta," but should also be treated as "intended third-party beneficiaries of the Water Supply Agreement." Reply Memorandum in Support of Plaintiffs' Motion for Summary Judgment, and Response in Opposition to Salt Lake City's Cross-Motion for Summary Judgment, filed March 19, 1997 (dkt. no. 31) ("Pltfs' Reply Mem. (SLC)"), at 11. They acknowledge "the right of Salt Lake City to exert some control over uses in the watershed," but deny its right to disallow "any new residential water use, no matter how environmentally sound" outside of Alta's 1976 limits. *Id.* at 19.

A. Implied Covenant of Good Faith and Fair Dealing

The Haiks assert that Salt Lake City's duty reasonably to give or refuse consent flows from the implied covenant of good faith and fair dealing, citing *Olympus Hills Shopping Ctr. Ltd. v. Smith's Food and Drug Centers, Inc.*, 889 P.2d 445, 451 (Utah Ct. App. 1994), *cert. denied*, 899 P.2d 1231 (Utah 1995). *Olympus Hills* recognizes that "parties who retain express power or

---

[14] Indeed, this provision may test the limits of Article XI, Section 6 of the Utah Constitution, which forbids a municipal corporation to "directly or indirectly, lease, sell, or alien or dispose of any waterworks, water rights, or sources of water supply now, or hereafter to be owned by it . . . ." *See generally Hyde Park Town v. Chambers*, 99 Utah 118, 104 P.2d 220 (1939) (agreement granting tap rights in consideration for right-of-way held void under Utah Const., art. XI, § 6; dictum that "[i]f they have surplus water they may sell it within legal bounds," citing statute).

discretion under contract can exercise that power or discretion in such a way as to breach the covenant of good faith and fair dealing," as where a party "'uses its discretion for a reason outside of the contemplated range--a reason beyond the risks assumed by the party claiming a breach,'" or for a reason inconsistent with "the justified expectations of the other party." *Id.* at 450, 451 (quoting Steven J. Burton, *Breach of Contract and the Common Law Duty to Perform in Good Faith*, 94 Harv.L.Rev. 369, 385-86 (1980), and Restatement (Second) of Contracts § 205 cmt. a (1981)). However, the Haiks do not delineate how Salt Lake City has wrongfully exercised power or discretion under the Water Supply Agreement, either for a reason beyond the risks that Alta assumed in that agreement or for a reason inconsistent with Alta's "justified expectations." *See id.* at 451.

Instead, the Haiks assert that Salt Lake City's distinction between allowing water use within Alta's city limits under the Water Supply Agreement and refusing consent to its use outside of Alta's 1976 city limits is simply irrational. While Salt Lake City may rationally limit development in order to maintain and improve water quality, the Haiks concede, extending water and sewer service to their property would not defeat this policy, but rather would further Salt Lake City's watershed protection goals.

That the Haiks' preferred outcome may be reasonable or rational does not of necessity render the contrary outcome unreasonable or irrational. Circumstances often admit more than one rational or reasonable result.

That Salt Lake City would refuse consent to extensions in order to limit developmental "sprawl" in the Albion Basin, as Salt Lake City avers it has done, does not indicate that it has

wrongfully exercised power or discretion under the Water Supply Agreement, either for a reason beyond the risks that Alta assumed in that agreement or for a reason inconsistent with Alta's "justified expectations." Restriction of Alta's expansion of water service seems to be the clear import of Paragraph 8.

Paragraph 8 is phrased not in the affirmative language of grant ("Alta may extend its pipelines . . . as approved by Salt Lake City"), but in the negative language of limitation: "pipelines shall not be extended to or supply water to any properties or facilities not within the present city limits of Alta without the prior written consent of [Salt Lake] City." In essence, Paragraph 8 takes the extension of Alta's water pipelines beyond its 1976 limits out of the subject matter of the Water Supply Agreement and makes such extensions the subject of a future, separate agreement requiring Salt Lake City's prior assent in writing.

The Haiks' counsel have diligently sifted the contract law books in search of a rule that would compel Salt Lake City to give consent under Paragraph 8 of the Water Supply Agreement, but they have done so to no avail. The court concludes that the Haiks have failed to establish that Salt Lake City has breached any duty reasonably to give or refuse consent, whether under the implied covenant of good faith and fair dealing, or otherwise.

B. Equal Protection Claims Against Salt Lake City

The Haiks do not challenge the validity of Salt Lake City's 1988 Water Management Plan, its 1991 Watershed Ordinance, or even the 1976 Water Supply Agreement. Instead they assail "the irrational distinction Salt Lake City has drawn between uses inside Alta's 1976 Town limits . . . and uses outside" in refusing to consent to extension of water service under Paragraph 8 the Water Supply Agreement. Pltfs' Reply/Opp. Mem. (SLC) at 19. The Haiks contend that Salt

Lake City's refusal to consent to water service violates the Haiks' right to equal protection under the law because it irrationally treats them differently from other similarly situated property owners. Allowing increased water use within the 1976 limits, the Haiks submit, threatens watershed degradation no less than increased water use outside those limits; where Salt Lake City allows one, in fairness it should allow the other, particularly where the amount of water already allocated for use by Alta under the 1976 Agreement would allow for such an extension.

The Haiks have recast their contractual "reasonableness" theory in constitutional terms. Their argument would also appear to recast Salt Lake City in the role of a local government furnishing water service to "similarly situated property owners," and whose conduct is to be scrutinized using the rational basis standard. *See Thompson v. Salt Lake City*, 724 P.2d at 959-60; *Bank of America Nat'l Trust v. Summerland County*, 767 F.2d 544, 548 (9th Cir. 1985).

Determining whether legislation survives rational-basis scrutiny is a two-step process. The first step is to identity a legitimate government purpose the enacting governmental body could have been pursuing. The actual motivations of the legislators are unimportant, and the decision makers are not required to articulate a reason for their acts. The second step of the rational-basis inquiry is to determine whether a rational basis exists to believe that the legislation would further the hypothesized purpose. Here the inquiry is whether a conceivably rational basis exists, not whether that basis was actually considered by the legislative body.

As noted above, however, Salt Lake City has no legal duty to furnish water to users outside its own city limits, be they "similarly situated" or not. As an owner of water rights, Salt Lake City's role in this instance is proprietary rather than administrative. The equal protection yardstick is simply not available to measure Salt Lake City's exercise of its contractual power to

consent pursuant to Paragraph 8 of the Water Supply Agreement.[15]

IV. "Taking" of the Haiks' Albion Basin Property

Alta also moved for summary judgment on the Haiks' claim that their Albion Basin property has been the subject of a "taking" without payment of just compensation.[16] The Haiks assert that development of their Albion Basin "was not foreclosed to the Haiks until after they had purchased the land in 1994," when Alta "refused to extend water or sewer to their lots in spite of the Haiks' willingness to pay for that extension," and consequently denied them a building permit. Pltfs' Reply/Opp. Mem. (Alta) at 24. "These actions," the Haiks argue, "constitute a taking." *Id.*

Governmental land use regulation may, under extreme circumstances, amount to a "taking" of the affected private property which entitles the property owner to just compensation under the United States and Utah Constitutions. *See, e.g., United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 126 (1985). To prevail on their taking claim, the Haiks must show that Alta's actions (1) did not substantially advance a legitimate public purpose; or (2) denied it economically viable use of its property. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1016 (1992); *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 834 (1987). The fact that a regulation deprives the property owner of *the most profitable use* of his property does not necessarily accomplish a taking or establish the owner's right to just compensation. *See Andrus v.*

---

[15] Moreover, even if subject to rational basis scrutiny, Salt Lake City responds that limiting development outside Alta's 1976 limits was accomplished "for the very purpose of preventing development over a dispersed area, since dispersed development has a greater detrimental impact on water quality," thus furnishing a rational basis for the distinction challenged by the Haiks. Reply Memorandum in Support of Defendant Salt Lake City's Cross Motion for Summary Judgment, filed April 9, 1997, at 19. While the Haiks dispute this rationale, they have not shown it to be arbitrary or capricious, or for that matter, unreasonable.

[16] The Haiks appear to make a Rule 56 cross motion on this claim for the first time in their reply memorandum. *See* Pltfs' Reply/Opp. Mem. (Alta) at 23 n.13.

Allard, 444 U.S. 51, 66 (1979).

In *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987), cited by the Haiks, the county adopted an ordinance expressly forbidding construction or reconstruction of buildings on canyon property that had been ravaged first by fire, then by flood, and then designated as an "interim flood protection area." *Id.* at 307. The Court held that "where the government's activities have already worked a taking of *all use of property*, no subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective." *Id.* at 321 (emphasis added). Here, Alta has adopted no express prohibition against building in the Albion Basin. Nor do the Haiks suggest that Alta's conditioning of issuance of building permits upon the availability of 400 gallons of water per day per unit amounts to a "taking" of all use of their property because it does not advance a legitimate public policy or unfairly forestalls any reasonable development. *Compare Del Monte Dunes at Monterey v. City of Monterey*, 95 F.3d 1422, 1434 (9th Cir. 1996).

In *Nollan v. California Coastal Commission*, the governmental entity conditioned the issuance of a building permit upon the landowners' surrender of an easement to the public across their beachfront property. The Court concluded in *Nollan* that if the governmental entity "wants an easement across the Nollans' property, it must pay for it." 483 U.S. at 842. Here, Alta has asked to Haiks to transfer, convey, or surrender nothing.

The Haiks still have in October of 1997 what they purchased from Marvin Melville in October of 1994: lots in Albion Basin Subdivision #1 with appurtenant water rights limited to 50 gallons per day per unit under the 1963 agreement. They retain the "full 'bundle' of property rights" they purchased. *Andrus*, 444 U.S. at 66. And notwithstanding the Haiks' assertion that at

the time of annexation, "Albion Basin property owners had a right to expect that they would be able to build homes on their land," Pltfs' Reply/Opp. Mem. (Alta) at 24,[17] they still lack the "one 'strand' of the bundle" that their predecessor in interest also did not have: a legal right to use water in an amount sufficient to satisfy the health department requirement of 400 gallons per day per unit. The Haiks cannot build on their property, not because Alta or Salt Lake City have changed the rules, but rather because the rules remain the same.

The right to *use* real property, as part of the constitutional right to "property" protected by the Fifth and Fourteenth Amendments, does not carry with it a corollary right to use water already put to other beneficial use by a prior appropriator. Nor does such a right obtain upon annexation in the form of an entitlement to "municipal services." Otherwise, state and local governments in the arid West could conceivably be held to have "taken" all lands for which no unappropriated water exists to be supplied through state, county or city systems.

In *Lockary v. Kayfetz*, 917 F.2d 1150 (9th Cir .1990), owners of undeveloped land who had been refused water hookups by a local public utility district sought compensation for the taking of their property because the lack of water hookups made them ineligible for county building permits and denied them all economically viable use of their land. Reversing summary judgment in favor of the utility district, the Ninth Circuit observed:

> Withholding *available* water from land zoned exclusively for residential use might interfere with the landowners' reasonable investment-backed expectations by preventing all practical use of that land. . . . That the [plaintiffs] can still walk on, or ride a bike on, or look at their land does not, at this preliminary stage of the case, reassure us to the contrary. In this context, *assuming that the [plaintiffs]*

---

[17] The Supreme Court has suggested that where an owner is denied only some economically viable uses, a taking still may have occurred where government action has a sufficient economic impact and interferes with distinct investment-backed expectations. *See Lucas*, 505 U.S. at 1019-20 n.8.

> *can show that sufficient water was available*, then BCPUD's water moratorium may indeed constitute more than a mere reduction in property value. *Cf. Trustees for Alaska v. E.P.A.*, 749 F.2d 549, 560 (9th Cir. 1984) (mere reduction in property value does not establish a denial of all economically viable use of property).

917 F.2d at 1155 (emphasis added & citation omitted). To establish a taking of their property, the landowners in *Lockary* were thus required to establish first that sufficient water was *available* to be furnished through the utility district hookups they requested.

Here, it appears from the record that neither the Haiks nor the Town of Alta have available the water necessary to make an "economically viable use" of the Albion Basin property through construction of residential dwellings. While Alta has rights under the Water Supply Agreement to more water than it currently uses, that water is not legally "available" outside Alta's 1976 limits without the consent of the proprietor, Salt Lake City. As the Ninth Circuit acknowledged in *Lockary*, if the loss of economic viability of property "is caused by something other than the government regulation, it does not constitute a taking." 917 F.2d at 1155 (citing *Bedford v. United States*, 192 U.S. 217, 225 (1904)).

On the present record, it appears that the Haiks' taking claim also fails as a matter of law.

V. Defendants' Motion to Strike Certain Exhibits

Alta also filed a motion to strike certain of the Haiks' exhibits[18] as, *inter alia*, not properly authenticated for purposes of Rule 56. Salt Lake City joined Alta's motion by footnote. *See* Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Defendant Salt Lake City's Cross-Motion for Summary Judgment, filed January 22, 1997 (dkt. no.

---

[18] Specifically, Alta objects to Exhibits 6, 16, 17, 24, 26, 27, 31, 40 and 42 to the Memorandum in Support of Plaintiffs' Motion for Partial Summary Judgment.

19), at 7 n.2.[19] The Haiks respond that the challenged documents were obtained pursuant to Utah Code Ann. § 63-2-102 from the defendants' own files and that there exist sufficent indicia of authenticity to render the exhibits admissible even at trial. Pltfs' Reply/Opp. Mem. (Alta) at 1-8.

Generally, under Rule 56 the moving party must adduce admissible evidence to demonstrate that there are no genuine issues of material fact which preclude entry of summary judgment, for it is clear that "only admissible evidence may be considered by the trial court in ruling on a motion for summary judgment." *Beyene v. Coleman Security Systems Services, Inc.*, 854 F.2d 1179, 1181 (9th Cir. 1988). *Accord, Hall v. Bellmon*, 935 F.2d 1106 (10th Cir. 1991); *Jones v. Wilkinson*, 800 F.2d 989, 1002 (10th Cir. 1986) ("Fed.R.Civ.P. 56 . . . requires that material supporting a motion for summary judgment be admissible evidence"); *World of Sleep, Inc. v. Lay-Z-Boy Chair Co.*, 756 F.2d 1467, 1474 (10th Cir. 1985) ("Under Fed.R.Civ.P. 56(e), the court may consider only admissible evidence in ruling on a motion for summary judgment."); *H.B. Zachry Co. v. O'Brien*, 378 F.2d 423, 425 (10th Cir. 1967).

> A moving party may . . . supplement the motion with affidavits, pleadings, deposition transcripts, interrogatory answers, admissions, stipulations, transcripts from another proceeding, oral testimony, *authenticated exhibits*, and anything of which the court may properly take judicial notice. To be considered, the facts contained in these materials must be admissible or usable at trial, although for purposes of summary judgment, the facts need not be presented to the court in a form admissible at trial.

Steven Baicker-McKee, et al., *Federal Civil Rules Handbook* 600 (1997 ed.) (emphasis added & footnote omitted).

Rule 56(e) expressly requires that summary judgment affidavits "set forth such facts as

---

[19] While Salt Lake City points to plaintiffs' Exhibits 14, 17, 23, 27, and 40 as having disputed authenticity, Alta's motion to strike did not address Exhibits 14 and 23 and are not encompassed within Salt Lake City's joinder in that motion.

would be admissible in evidence . . . ." The same principles apply to deposition testimony and other forms of evidence approved for use on summary judgment by Rule 56(c). *See Garside v. Osco Drug, Inc.*, 895 F.2d 46, 49 (1st Cir. 1990); *Klein v. Trustees of Indiana University*, 766 F.2d 275, 283 (7th Cir. 1985) ("the party opposing the summary judgment motion must present affidavits, depositions, answers to interrogatories, or admissions which set forth disputed facts in a form admissible in evidence.") 762 F.2d 952); *Clay v. Equifax, Inc.*, 762 F.2d 952, 956 (11th Cir. 1985). As the court observed in *Martz v. Union Labor Life Ins. Co.*, 757 F.2d 135, 138 (7th Cir. 1985): "The facts must be established through one of the vehicles designed to ensure reliability and veracity--depositions, answers to interrogatories, admissions and affidavits. When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made admissible in evidence. 6 Moore's Federal Practice P 56.11[1.-8] (2d ed. 1983)." *See also Singer v. Wadman*, 595 F. Supp. 188, 269 (D. Utah) (Winder, J.). Only deposition testimony that in substance would be admissible in evidence at trial may be introduced on a summary judgment motion. *Skillsky v. Lucky Stores, Inc.*, 893 F.2d 1088, 1091 (9th Cir. 1990) (deposition testimony that is not based on personal knowledge and is hearsay is inadmissible and cannot raise a genuine issue of material fact sufficient to withstand summary judgment); *Jacobsen v. Filler*, 790 F.2d 1362, 1367 (9th Cir.1986).

The Haiks may be correct that when examined, each of the challenged exhibits would prove to be authentic.[20] Nevertheless, as moving parties under Rule 56, the Haiks are bound to

---

[20] However, as a general rule, newspaper articles (*e.g.*, Exhibit 40) are not admissible for purposes of summary judgment. *See, e.g., Horta v. Sullivan*, 4 F.3d 2, 8 (1st Cir. 1993) (court refused to consider hearsay newspaper account in exhibit form and asserted that "inadmissible evidence may not be considered"); *Dowdell v. Chapman*, 930 F.Supp. 533, 541 (M.D. Ala. 1996) *Tilton v. Capital Cities/ABC, Inc.*, 905 F.Supp. 1514, 1544 (N.D. Okla. 1995) (a "newspaper article is not proper evidence for submission on summary judgment as it is inadmissible hearsay").

(continued...)

abide by the rule's requirements concerning the admissibility of Rule 56(c) materials. For that reason, the defendants' motion to strike plaintiffs' Exhibits 6, 16, 17, 24, 26, 27, 31, 40 and 42 should be granted.[21]

Conclusion

The Haiks have failed to show that they are entitled to judgment as a matter of law that the Town of Alta, by declining to extend its water service to the Haiks' Albion Basin property, has denied them equal protection of the laws, or breached any other asserted statutory or contractual duty to furnish culinary water. The Haiks likewise have failed to establish a breach of any contractual or other legal duty on the part of Salt Lake City to approve the extension of Alta's water lines to serve the Haiks' property. The parties having established the absence of any genuine issue of material fact, it now appears that the Town of Alta and Salt Lake City are each entitled to judgment as a matter of law on the Haiks' pleaded claims. Therefore,

IT IS ORDERED that plaintiffs' motion for partial summary judgment is DENIED; that defendant Town of alta's motion for summary judgment is GRANTED; that the Town of Alta's motion to strike is GRANTED; and that Salt Lake City's motion for summary judgment is

---

[20](...continued)

[21] The Haiks requested a continuance should "the Court determine[] that the challenged exhibits must be struck, and that without them it must deny the plaintiffs' Motion for Summary Judgment." Pltfs' Reply/Opp. Mem. (Alta) at 8. It appears, however, that the exhibits in question are not material to the issues that the Court has determined to be dispositive, and a continuance to permit authentication of the exhibits appears unnecessary.

GRANTED, and plaintiffs' complaint shall be and hereby is DISMISSED.

DATED this 31 day of October, 1997.

BY THE COURT:

Bruce S. Jenkins
United States Senior District Judge

HOOTEN LETTER
AUGUST 8, 2006

LEROY W. HOOTON, JR.
DIRECTOR

SALT LAKE CITY CORPORATION
DEPARTMENT OF PUBLIC UTILITIES
WATER SUPPLY AND WATERWORKS
WATER RECLAMATION AND STORMWATER

ROSS C. "ROCKY" ANDERSON
MAYOR

August 8, 2006

The Honorable Tom Pollard
Mayor, Town of Alta
P.O. Box 8016
Alta, Utah 84092-8016

Re: Town of Alta Water Supply

Dear Mayor Pollard:

We understand the Town of Alta is working with the Utah Division of Drinking Water, Drinking Water Board (the "Board"), to obtain a variance related to the antimony levels and timeline for implementation established by the State of Utah. As part of this variance, the Board has requested a statement from Salt Lake City regarding restrictions inherent in the Town's water supply.

Alta obtains 100% of its drinking water from Salt Lake City, pursuant to that certain Water Supply Agreement between Salt Lake City and the Town, dated August 12, 1976, as amended (the "Contract"). Under the terms of the Contract, Alta may take water only from the following two sources: (i) the Bay City Mine, and (ii) a diversion point above the Snake Pit on Little Cottonwood Creek, as more particularly specified in the Contract. In addition, the Town may, under the terms of an MOU entered into between Salt Lake City and the Town on August 15, 2005, take water under limited circumstances and conditions from a tunnel on the J.P. Lode Mining Claim specified as a source under a water supply contract between Salt Lake City and Salt Lake County Service Area # 3. Use of water from Service Area #3 is on a temporary basis only, in connection with a pilot project to determine the feasibility of blending water from an alternate source to reduce the concentration of antimony in Alta's water supply. The MOU contemplated that, if the pilot project proved successful, the parties would explore the feasibility of allowing water use from such alternative source on a more permanent basis.

Alta has no right to purchase water from Salt Lake City from any source other than as described above. Under Salt Lake City's watershed ordinance, the City may not expand the existing Contract. The ordinance does allow for a change in the source (which is the legal basis for the temporary MOU). However, the ordinance expressly prohibits the drilling of wells as new water sources.

1530 SOUTH WEST TEMPLE, SALT LAKE CITY, UTAH 84115
TELEPHONE: 801-483-6900 FAX: 801-483-6819
WWW.SLCGOV.COM

Please contact me if you have any questions regarding Alta's sources of water supply.

Sincerely,

LeRoy W. Hooton, Jr.,
Director

LWH:JN

Cc: Chris Bramhall – Deputy City Attorney
file

HOOTEN MEMORANDUM
APRIL 3, 1992

INTEROFFICE MEMORANDUM

TO: FILE

FROM: LeRoy W. Hooton, Jr., Director

DATE: April 3, 1992

RE: MAYOR LEAVITT MEETING

Those in attendance were: LeRoy W. Hooton, Jr., Dallas Richins, Brian Hatch, Anne Quinn, Mayor Leavitt and John Golder.

1. We discussed the status of Salt Lake City's effort to acquire Little Cottonwood Water Company water contracts in the Albion Basin. We indicated that there was a snag with the transfer because of a recent lawsuit. However, Salt Lake City and Dallas Richins, Secretary of the Company have been able to discourage new development by relying on the regulation that requires 400 gpd water for a building permit.

2. We indicated to Mayor Leavitt that we didn't know how the lawsuit by Cahoon & Maxfield, et al, would affect Alta's water supply contract with Salt Lake City, but we felt that we could work through the suit and have alternatives.

3. Mayor Leavitt expressed his concern about potential development in the Albion Basin and the commercial use of some of the cabins.

4. Mayor Leavitt said that he was initiating an environmental wetlands study of the Albion Basin to define wetlands within the watershed. The study will be conducted by Steve Jensen of the City-County Health Department and has the support of the City-County Health Department and the U.S. Forest Service. He asked for Salt Lake City's support which he was given.

5. The discussion turned to the purchase of the Albion Basin private lots and Mayor Leavitt's frustration over the appraisal process. He indicated that the property owners are paying taxes on lots assessed at $10,000 while the Forest Service appraisals would only pay for watershed land at $200 to $500 per lot. He said that the Lift Company had recently sold lots for $10,000 plus a tax write-off. He further stated his concern over potential events that in the future could lead to development in the Albion Basin.

6. We indicated that the Albion Basin is still a high priority for purchase by the Public Utilities Advisory Committee and that we still support converting the private land to public ownership. We further talked about the Central Utah Completion Act which provided $4.1 million for watershed land purchases including Albion Basin. Mayor Leavitt indicated that he learned that there

were some who wanted to divert these funds for other purposes. We again reiterated our support for the land purchase and our efforts would be directed to prevent the Central Utah Water Conservancy District from diverting these funds to other areas.

7. It was finally agreed that we would take a fresh look at this issue to see if we could come up with some innovative way of paying a more realistic price for the lots. Mayor Leavitt suggested a cost-sharing with the "Friends of Alta" organization.

8. Meeting concluded with both Salt Lake City and Town of Alta making a commitment to cooperation and joint efforts in protecting the watershed and water quality in Little Cottonwood Canyon.

LWH/db

LITTLE COTTONWOOD CONTRACT
ALBION ALPS SUB 1971

AGREEMENT

THIS AGREEMENT MADE and entered into this 22 day of September 1971 by and between LITTLE COTTONWOOD WATER COMPANY a mutual irrigation company organized under the laws of the State of Utah, hereinafter called "Water Company," and ALBION ALPS PROPERTY OWNERS, the owners of certain property situated in Albion Basin in Little Cottonwood Canyon, Salt Lake County, Utah, hereinafter called "Users";

WITNESSETH:

WHEREAS, the Water Company is the owner of all of the waters arising upon the drainage of Little Cottonwood Creek in Salt Lake County, Utah, subject to such other rights as may be evidenced by appropriations and diligence claims on file in the office of the State Engineer of the State of Utah; and,

WHEREAS, the undersigned users are desirous of obtaining a right to use some of the water arising in Little Cottonwood Canyon from Water Company, all under the terms and conditions of this Agreement; and,

WHEREAS, the Users represent that they have an agreement with the Salt Lake City-County Board of Health relative to sanitation and sewage disposal problems incident to the occupancy of any structures existing or hereafter to be constructed upon the property of the Users hereinbefore referred to;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. The Users have constructed works in a mine tunnel located on ~~United States Forest Service land~~ private land at Narrow Tunnel 3271 south of the subdivision to collect certain water belonging to the Water Company and at their expense to transport same to the property.

2. The Users agree to construct and maintain a pipe or pipelines at their expense, and to repair and maintain the same, together with any tanks, pumps or other facilities necessary to the movement of water from its source to Users building.

3. The Water Company shall have no obligation whatsoever to the Users in regard to the construction, maintenance or repair of said facilities, and the Users agree that the same will at all times be so

maintained as to prevent any loss or waste of water. Said pipeline shall be so constructed that there will be a turn-off valve at a convenient point outside said building so that the water to said building can be shut off when service is discontinued.

4. It is expressly understood and agreed that said pipeline shall not under any circumstances be extended to supply any other structure or property or facilities other than herein provided.

5. The Users will, at their own expense, install and maintain upon said pipeline a water meter approved by the Water Company for the purpose of measuring the amount of water used by the Users. The Water Company will at all times have access to said meter, and may charge for the water so used at the then prevailing Salt Lake City water rates plus one-half, or a rate of one and one-half times the Salt Lake City water rates, and in the absence of a decision by the Water Company to so charge, the Users will pay a flat rate of $15.00 per year.

6. The use of water by the Users shall be limited to culinary uses only, and shall not be used for irrigation or sprinkling.

7. The Users will take the water as is, with no representation by the Water Company as to Quantity, Quality or Purity. The Water Company is under no obligation to render said water fit or suitable for human consumption.

8. It is understood and agreed that the Water Company is under obligation to deliver water to other persons, firms and corporations, and this Agreement is made only as to the waters in excess of the Water Company's other obligations, and if at any time the Water Company is unable to furnish the water provided for by this Agreement, it may cancel and terminate the same upon giving written notice to the Users. Said notice is to be served either personally or by registered mail at the last known address of the Users.

9. It is understood and agreed that the Water Company may terminate the delivery of water under the terms of this Agreement for the violation of any of the terms and conditions hereof by the Users, including the failure to pay water bills herein provided, or for the violation of any of the sanitary regulations of the Salt Lake City-County Board of Health in effect from time to time.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

LITTLE COTTONWOOD WATER COMPANY

By_____

ALBION ALPS #2 SUBDIVISION

_____
Lot 203

_____
LOT 201

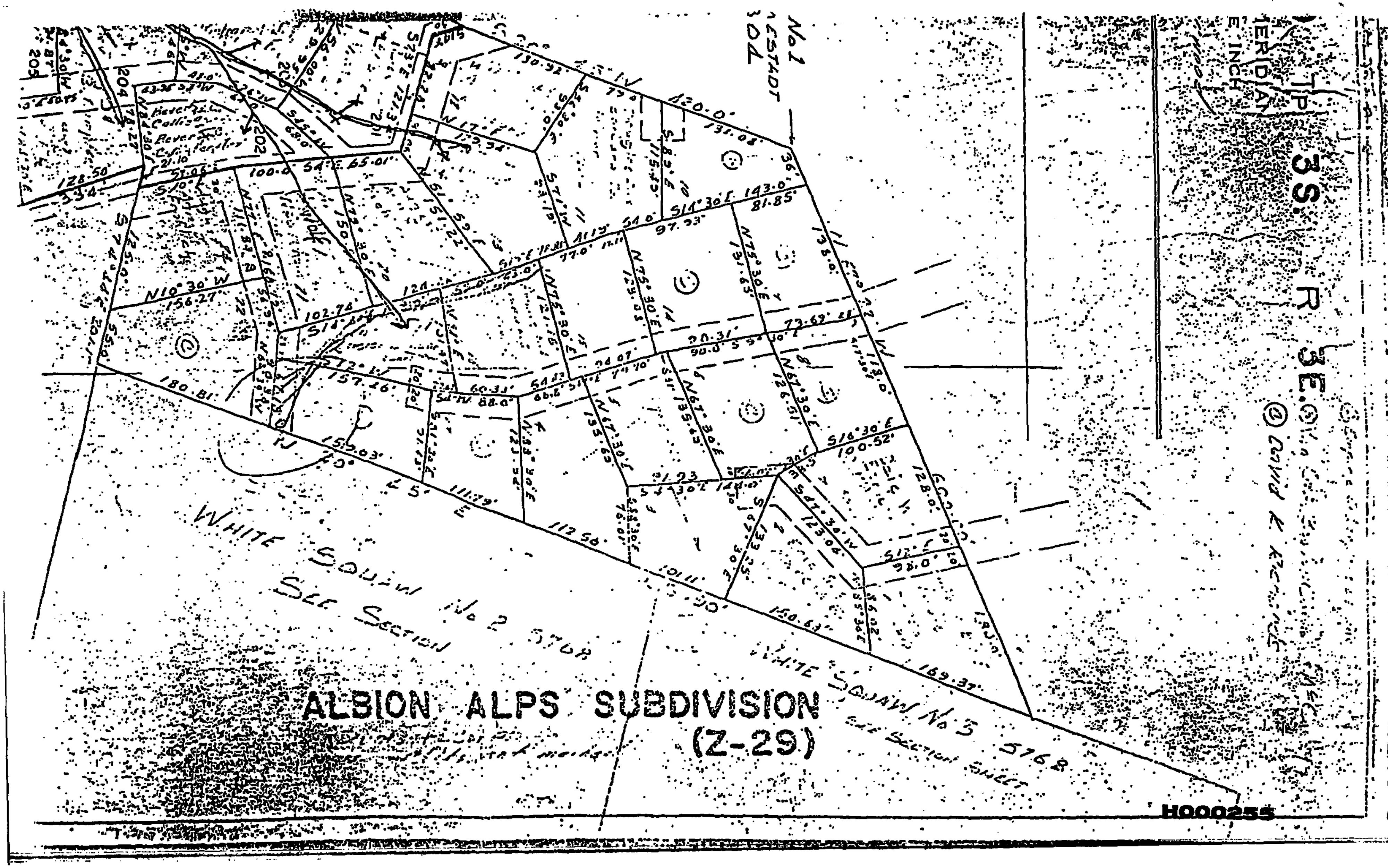
_____
Lot 13

_____

_____

_____

_____


ALBION ALPS SUBDIVISION
(Z-29)
WHITE SQUAW No 2 5708
SEE SECTION
WHITE SQUAW No 3 5768
SEE SECTION SHEET

H000255

LITTLE COTTONWOOD CONTRACT
CECRET LAKE SUB 1981

AGREEMENT BETWEEN LITTLE COTTONWOOD WATER COMPANY AND OWNERS OF HOMES IN THE CECRET LAKE AREA RELATIVE TO USE OF WATER FOR DOMESTIC PURPOSES IN LITTLE COTTONWOOD CANYON

THIS AGREEMENT, made and entered into this 30th day of October, 1981, by and between LITTLE COTTONWOOD WATER COMPANY, an irrigation company of the State of Utah, hereinafter called the Water Company, and the following named persons, their heirs, successors and assigns, it being specifically recognized and represented by said persons that they are acting as agent for each and every person who currently holds title to any parcel of property that each of them holds, whether in joint tenancy, tenancy in common, or in any other manner, and that it is intended by this agreement that all persons holding title to any parcels of ground in any such tenancy, or any other tenancy with any signatory, are to be bound by the terms of this agreement, hereinafter the same collectively called the Users, to-wit: M. Byron Fisher, Richard H. Nebeker, Pete Gibbs, Tel Charlier, Steven H. Stewart, Ruth R. Crockatt, Charles P. Miles, Carman E. Kipp, William B. Smart, Don M. Page and Kathrine E. Hanson.

WITNESSETH:

1. That the Users are individuals owning property, or having the right to use of property, situated in Little Cottonwood Canyon, Town of Alta, Salt Lake County, State of Utah, and the land referred to has been subdivided into 15 building lots, and the Users represent that said land will not be further subdivided and that the maximum number of buildings to be constructed on the property to be serviced by the Users will not exceed 15.

LAW OFFICES OF
MOFFAT, WELLING & PAULSEN
A PROFESSIONAL CORPORATION
SUITE 300
261 EAST BROADWAY
SALT LAKE CITY, UTAH 84111

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. That the source of water from which the water will be conveyed by pipeline to the cabins or residences to be serviced by the Users will commence at the point of diversion hereinbefore referred to and run directly to the cabins or residences to be serviced under this agreement by the Users where now situated or where hereafter constructed.

2. The Users agree to construct, from the point of diversion to the cabins to be constructed on the land hereinbefore described, a pipeline adequate to carry the water from the point of diversion to said cabins or residences, said pipeline to be constructed solely at the cost of the Users, and the Users agree to maintain said pipeline and to repair the same, together with any tanks, pumps or other facilities necessary or incidental to the movement of the water from the point of diversion to the cabins or residences, and the Water Company shall have no obligation whatsoever to the Users, or any lessees, assigns or grantees, in regard to the construction, maintenance or repair of said facilities, and the Users agree that the same will at all times be so maintained as to prevent any loss or waste of water. Said pipeline shall be so constructed that there will be a turn-off valve at a convenient point outside of each cabin or residence so that water to each cabin or residence can be shut off and service discontinued.

3. The Users will cause to be furnished to the Water Company, on or before June 1 of each calendar year, a written statement showing each and every cabin or other structure situated upon the subdivision hereinbefore referred to, and appropriately identifying each to which water under this agreement is to be delivered during any part of the calendar year,

LAW OFFICES OF
MOFFAT, WELLING & PAULSEN
A PROFESSIONAL CORPORATION
SUITE 300
261 EAST BROADWAY
SALT LAKE CITY, UTAH 84111

2. The Users represent that there formerly was in existence an organization known as the Cecret Lake Water Corporation, which since has become defunct, and that the Users are the successors in interest insofar as the use of water as hereinafter described is concerned, and that it is proposed to service no more than 15 single-family dwellings within the Cecret Lake Subdivision, pursuant to the terms of this agreement.

3. The Users represent that their predecessor in interest, Cecret Lake Water Corporation, had a permit from the Division of Health, Department of Social Services, of the State of Utah, relative to the installation of certain diversion facilities from a spring situated at the following point:

> A spring of water which is at a point from which the section corner of Sections 32 and 33 on the South Boundary of Township 2 South, Range 3 East of Salt Lake Meridian bears North 52°34' West 300 feet; thence North 37°26' East 1130.2 feet; thence North 52°34' West 600 feet; thence North 21°6' West 7371.4 feet distant,

and that the terms and conditions of said permit are incorporated into this agreement by reference, and the Users agree that at all times they will install and maintain said diversion system in accordance with said permit and the rules and regulations from time to time to be promulgated by said Division of Health, Department of Social Services, of the State of Utah, and of Salt Lake City-County Health Department.

4. The Water Company is the owner or charged with the responsibility for the distribution of the waters of Little Cottonwood Creek, which encompasses all the waters arising in Little Cottonwood Canyon tributary to said creek, and some of the said waters can be made available to the Users pursuant to the terms of this Agreement.

LAW OFFICES OF
MOFFAT, WELLING & PAULSEN
A PROFESSIONAL CORPORATION
SUITE 300
261 EAST BROADWAY
SALT LAKE CITY, UTAH 84111

and at said time to pay the Water Company the sum of $25.00 for each cabin or structure to which water is delivered pursuant to this agreement. Should any cabin or structure be built subsequent to June 1 of any calendar year, and a water connection made to the same, the Water Company shall be promptly advised and the annual yearly payment herein provided shall be made. The annual payment herein provided for shall entitle the Users to use at each such cabin or other structure to which said pipeline is connected a quantity of water not to exceed fifty (50) gallons per day, averaged on a monthly basis. This agreement does not cover any multiple dwelling structures, hotels, inns or other such facilities. The annual rental of $25.00 per year will be adjusted upwards in any year in which Salt Lake City increases its water rates, said increase to be proportionate to the increase made in Salt Lake City's domestic water rates.

4. The use of water shall be limited to domestic use only and shall not be used for irrigation or sprinkling.

5. The Users will take such water as is, with no representations by the Water Company as to quality or purity. The Water Company is under no obligation to render said water fit or suitable for human consumption.

6. It is understood and agreed that the Water Company is under obligations to deliver water to other persons, firms and corporations, and this agreement is made only as to waters in excess of the Water Company's other obligations, and if at any time the Water Company is unable to furnish the water provided for by this agreement, it may cancel and terminate the same upon giving written notice thereof to the Users, said notice to be served personally or by registered mail at the last known address of the User.

LAW OFFICES OF
MOFFAT, WELLING & PAULSEN
A PROFESSIONAL CORPORATION
SUITE 300
261 EAST BROADWAY
SALT LAKE CITY, UTAH 84111

7. It is understood and agreed that the Water Company may terminate the delivery of water under and pursuant to this agreement for the violation of any of the terms and conditions hereof by the Users, including failure to pay the annual rental herein provided, or for the violation of any of the sanitary regulations of the Salt Lake City-County Board of Health in effect from time to time.

8. It is understood and agreed by and between the parties hereto that Salt Lake City, a municipal corporation, is the owner of a substantial portion of the waters of Little Cottonwood Creek and should the Water Company and Salt Lake City at any time agree that it meets the convenience of said two parties to assign this agreement to Salt Lake City, this agreement may be so assigned; and upon said assignment being so executed, all the rights and obligations of the parties hereto shall then be between Salt Lake City, a municipal corporation, and the Users.

IN WITNESS WHEREOF, the Water Company has caused these presents to be executed by its officers thereunto duly authorized, and the Users have caused these presents to be executed, as of the day and year first above written.

LITTLE COTTONWOOD WATER COMPANY

By _____
President

Attest:

_____
Secretary

LAW OFFICES OF
MOFFAT, WELLING & PAULSEN
A PROFESSIONAL CORPORATION
SUITE 300
261 EAST BROADWAY
SALT LAKE CITY, UTAH 84111

USERS:

M. BYRON FISHER

RICHARD H. NEBEKER

PETER GIBBS

TEL CHARLIER

STEVEN H. STEWART

RUTH R. CROCKATT

CHARLES P. MILES

DON M. PAGE

CARMAN KIPP

WILLIAM B. SMART

KATHERINE E. HANSON

H000325

MAY 11, 2007 DRINKING WATER BOARD MEETING COMMENTS

M. C. Haik
Post Office Box 17124
Holladay, Utah
84117-0124

801.582.9901
801.520.5858
mchaik@qwest.net

Memorandum on Antimony Variance for Water System #18049-Reports due from the Town of Alta pursuant to the Direction of the Drinking Water Board

April 25, 2007

State of Utah Drinking Water Board
Mr. Kenneth H. Bousfield
Compliance Manager-Division of Drinking Water
Members of the Drinking Water Board
Ms. Anne Erickson-Chair
Mr. Myron Bateman-Vice Chair
Mr. Ken Bassett
Mr. Daniel Fleming
Mr. Jay Franson
Ms. Helen Graber
Mr. Paul Hansen
Ms. Laurie McNeill
Ms. Diann R. Nielson
Ms. Petra Rust
Mr. Ron Thompson
Mr. Kevin Brown-Executive Secretary

Re: Antimony Variance for Water System #18049-Reports due from the Town of Alta pursuant to the Direction of the Drinking Water Board at the May 11, 2006 Board Meeting.

Pursuant to the Directives issued at the March 3, 2006 deliberations, and by letter dated April 12, 2006, the Drinking Water Board requested the TOA provide the following:

1] Report the status of any research.
2] Report the status of any testing.
3] Report the status of any blending results.
4] Report the status of any literature reviews conducted during the 24 month period.
5] To submit the report annually to Division of Drinking Water staff on or before January 31, 2007 and January 31,2008.
6] The Board further directed that the Town of Alta report on the status of water rights in its first report on or before January 31, 2007.

The Drinking Water Board interpreted this to mean:

A) That The Town of Alta would show that Salt Lake City owns the water Rights in the Little Cottonwood Canyon area.

B) The Town of Alta uses water by agreement with Salt Lake City.

C) A statement by an appropriate representative from Salt Lake City indicating their restrictions on Alta's use of Salt Lake City's water.

The TOA has failed to make a substantive response to the Drinking Water Board. Nor did the TOA make a timely response to the Drinking Water Board. The TOA's failure to make a substantive response to the Directives of the Drinking Water Board, should not deprive the Drinking Water Board of information necessary to make an informed decision regarding the drinking water supplies either public or private in the TOA. The following matters should have been disclosed to the Drinking Water Board Pursuant to the Directives issued at the March 3, 2006 deliberations, and by letter dated April 12, 2006:

The 1976 Water Supply Agreement and the terms and conditions thereof.
Status of water rights or claims owned by Salt Lake City in the Alta area.
Status of water rights or claims owned by others in the Alta area.

I have included a copy of the original 1976 Water Supply Agreement and will discuss that agreement first. The agreement is permissive is character and does not impart any water rights to the TOA only surplus water. The agreement may terminated at any time, for any reason upon thirty days written notice by Salt Lake City(#11). The agreement permits water amounts not to exceed 265,000 gallons per day(#1) and further that if another contract is not terminated, the maximum amount of water to which the TOA is entitled shall be reduced by 150,000 gallons per day (#2) leaving 115,000 gallons per day as the contract amount. The Town of Alta may supply water outside of the 1976 TOA limits without written consent of Salt Lake City (#8). The water supplied by the agreement shall be limited solely to domestic and commercial culinary purposes and shall not be used for agriculture or sprinkling of any type (#9). The TOA agrees that until the EPA 208 study is complete no additional users shall be added to the system. TOA agrees to convey to Salt Lake City valves and facilities from the source to the meters and also obtain and convey all rights of way and easements necessary to permit Salt Lake City access to all valves and facilities from the source to the meters(#5&6). The original agreement it has since been amended to permit the TOA to supply water to the Alta Ski Lifts Company with water for snowmaking purposes, a purpose which was specifically prohibited by the original agreement and other similar contracts to provide water in the TOA.

The terms and conditions of the 1976 have never been applied by either the seller, Salt Lake City, nor the buyer the TOA, as to the amount of water delivered to the TOA. The TOA has consistently used water amounts far in excess of the contract amount, with the knowledge and consent of Salt Lake City. The contract cited in paragraph #2 of the 1976 Agreement has not been terminated and appears on the Utah Division of Water Rights records UTDWR #57-10010. The TOA has the ability pursuant to the 1976 Water Agreement to purchase only 115,000 gallons of *surplus* water per day for municipal use, which use may be terminated by Salt Lake City with thirty days notice. Historically the TOA has not used the contract amount during the summer months and far exceeded the contract amount during the winter months. This pattern of use does not alter the terms and conditions of the agreement. Both Salt Lake City and the TOA make the following claim in a Submission of Court Requested Information:

The May 20, 1975 Agreement (the "Peruvian Contract") referenced in the 1976 Water Supply Agreement, may not have been effectively terminated and Salt Lake City may, therefore, be contractually obligated to provide up to 150,000 gallons of water per day to the signatories of that Agreement, (the "Peruvian Contract Customers") which signatories did not include the Town of Alta. Accordingly, the Town of Alta, under to the 1976 Water Supply Agreement, may have only a contractual claim to 115,000 gallons per day.[3]

---

[2] The 1976 reference is an error. The actual agreement date is May 20, 1975.

[3] The Town of Alta reserves the right to challenge such an interpretation although it generally agrees that a substantial portion of its 265,000 entitlement under the 1976 Contract may be claimed by the Peruvian Contract Customers. Alta reserves the right to assert that it is entitled to use enough of the 150,000 gallon capacity referred to in the Peruvian Contract to satisfy the water demands within its 1976 boundaries which exceed the arguable 115,000 gallon limit under the 1976 Contract.

Thus the TOA acknowledges that the TOA is using water which the TOA has no right to use and Salt Lake City is not contractually obligated to provide pursuant to the 1976 Water Supply Agreement. The only true meaning discernable regarding the 1976 Water Supply Agreement between Salt Lake City and the TOA is that a specific group of taxpaying property owners in the Albion Basin, Albion Alps & Cecret Lake subdivisons will not be provided municipal water service as a policy matter due to Salt Lake City's lack of consent. The plain language of the Agreement and the terms and conditions thereof are vacant as to amount of water provided and uses of water.

The case of Haik v. TOA and Salt Lake City (Case No. F-2-96-CV-0732) in which the claims above were made is often cited by TOA officials and staff as meaning that the property in the Albion Basin, Albion Alps & Cecret Lake subdivisons cannot not be further developed. That mis-construes the decision in that case. The decision by Judge Jenkins merely affirmed Salt Lake City's ability to withhold consent to provide water outside the TOA's 1976 geographic boundaries. It is notable that the Cecret Lake properties are within the TOA 1976 geographic boundaries, the other two subdivisions are not. The decision by Judge Jenkins goes further to say that the taking claims made by Haik in that action were without merit precisely because Haik had the right to develop and that Haik had 50 gallons per day per lot which is merely a shortage of water.

"The Haiks still have in October of 1997 what they purchased from Marvin Melville in October of 1994: lots in Albion Basin Subdivision #1 with appurtenant water rights limited to 50 gallons per day per unit under the 1963 agreement. They retain the "full 'bundle' of property rights" they purchased." (Case No. F-2-96-CV-0732).

That Salt Lake City can withhold their consent under the terms and conditions of the 1976 Water Supply Agreement does not in any way constrain the TOA from seeking, claiming, purchasing additional water resources to provide culinary water to those who pay taxes for municipal services but are not yet served.

It is important for the Drinking Water Board to understand that there are numerous suppliers of water within the current limits of the TOA. A review of some of the most prominent due to being situated the in Albion Basin Annexation to the TOA.

First is the Canyonlands contract with Little Cottonwood Water Co. This is the contract discussed in the Jenkins decision. This contract provides water to the property in the Albion Basin Subdivision, which was platted and approved in 1963 by Salt Lake County, prior to the incorporation of the TOA (Salt Lake City is purported to be the successor in interest to Little Cottonwood Water Co.). This contract provides for 50 gallons per lot per day. During the same period of time that Salt Lake City was withholding consent to permit the TOA to provide additional water to this subdivision, Salt Lake City had before the State Engineer a Change Application, to move water from a point of diversion in the Salt Lake Valley, to the Albion Basin Subdivision for the purpose of providing culinary/municipal water to the property in the Albion Basin Subdivision. The change application was approved by the State Engineer. Why would Salt Lake City deny consent to a municipality to provide water and at the same time move additional water specifically to the property it is seeking to deny water service?? The change application would appear to have been fraudulent and made materially false representations. The amount of water moved would appear to meet all necessary volume requirements for a building permit. This action was difficult understand. The following is an excerpt from a April 3, 1992 file memo by Leroy W. Hooten Director of the Salt Lake City Department of Public Utilities:

INTEROFFICE MEMORANDUM

TO: FILE

FROM: LeRoy W. Hooton, Jr., Director

DATE: April 3, 1992

RE: MAYOR LEAVITT MEETING

Those in attendance were: LeRoy W. Hooton, Jr., Dallas Richins, Brian Hatch, Anne Quinn, Mayor Leavitt and John Golder.

1. We discussed the status of Salt Lake City's effort to acquire Little Cottonwood Water Company water contracts in the Albion Basin. We indicated that there was a snag with the transfer because of a recent lawsuit. However, Salt Lake City and Dallas Richins, Secretary of the Company have been able to discourage new development by relying on the regulation that requires 400 gpd water for a building permit.

Second is the Albion Alps contract with Little Cottonwood Water Co. This contract provides water to the property in the Albion Alps Subdivision, which was platted and approved in prior to the incorporation of the TOA 1963 by Salt Lake County. (Salt Lake City is purported to be the successor in interest to Little Cottonwood Water Co.). This contract contains no specific value regarding amounts of water to be supplied.

Third is the Cecret Lake contract with Little Cottonwood Water Co. This contract provides water to the property in the Cecret Lake annexation to the TOA. These properties differ from the Albion Basin & Albion Alps subdivision properties because they are within the geographic bounds of 1976 Water Supply Agreement between Salt Lake City and the Town of Alta, thus eligible to be served pursuant to the terms and conditions of that agreement, but service has been refused by the TOA.

It is important to note that the Albion Basin Annexation to the TOA is only a portion of the geologic feature known as the Albion Basin. The 1976 Water Supply Agreement between Salt Lake City and the Town of Alta, bisects the geologic feature known as the Albion Basin. Thus you have the situation that the Alta Ski Lifts daylodge is able to be provided water, while properties a couple hundred feet away are denied service.

The subdivided properties described above all contain approved water infrastructure improvements. Some of the properties have home improvements as well. All were intended to be built upon and were zoned for single family when approved.

The TOA in pleadings in the case of Haik v. TOA and Salt Lake City (Case No. F-2-96-CV-0732) vehemently pleaded that; but for Salt Lake Lake City withholding consent, the TOA would gladly provide service to the above described properties. The TOA officials appear to

believe that Salt Lake City owns and or controls all the water in Little Cottonwood canyon. This is not the case. There are numerous owners of water, public and private which could be applied within the TOA should the elected officials pursue acquisition of additional sources. Most prominent of these would be the Jordon Valley Water Conservancy District whose mission statement explicitly states that they are to provide wholesale water to municipalities. The TOA has failed to pursue any water resources sufficient to meet the needs of the municipality. The current supply may be terminated at will by Salt Lake City. The TOA has not sought additional water resources because the current elected officials do not desire to serve all the taxpayers within the municipality. The could and should seek a reliable supply of water to meet the present and future needs of the municipality. The TOA has co-operated and coordinated with the City of Salt Lake to deny culinary water resources to the historically benefited properties solely to prevent the building of homes. The TOA has co-operated and coordinated with the City of Salt Lake to expand use of water to commercial enterprises for culinary as well as irrigation of treated drinking water. Salt Lake City has a policy of denying culinary water to intended beneficiaries not due to lack of water resources but merely deny development which would otherwise be legally possible with sufficient water.

The Board of Drinking Water should direct the following information to be provided by the TOA prior to the issuance of additional variances:

1] Disclose amount of water it has under contract from Salt Lake City.
2] Disclose any other water sources has any interest in.
2] Disclose all sources of water which connect in any manner to the TOA water system.
3] Disclose all inquires made regarding seeking additional water resources which are not terminable by other party.
4] Disclose all private water systems in the TOA and the Source Protection Zones for those systems.
5] Disclose all reports regarding water sources with antimony contamination other than the Bay City mine.
6] Disclose all sources the TOA has investigated to blend water with Bay City mine water.
7] Disclose the State of Utah Source Protection Plan required by UCA.
8] Disclose plan to serve all taxpayers with culinary water in future.
9] Provide map of water easements and infrastructure to committee.

PERUVIAN CONTRACT
UT DWR 57-010010

(WARNING: Water Rights makes NO claims as to the accuracy of this data.) RUN DATE: 04/26/2007 Page 1

CHANGE: a16841 WATER RIGHT: 57-10010 CERT. NO.: AMENDATORY? No
BASE WATER RIGHTS: 57-10010
RIGHT EVIDENCED BY: C.W. Morse Decree, Civil #4802, Water Right No. 57-8973
CHANGES: Point of Diversion [X], Place of Use [X], Nature of Use [ ], Reservoir Storage [ ].

NAME: Salt Lake City Corporation
ADDR: Department of Public Utilities
1530 South West Temple
Salt Lake City UT 84115
REMARKS:

FILED: 06/24/1992 | PRIORITY: 06/24/1992 | ADV BEGAN: 04/15/1993 | ADV ENDED: | NEWSPAPER: Deseret News
ProtestEnd:05/29/1993 | PROTESTED: [Hear Hel] | HEARNG HLD: | SE ACTION: [Approved] | ActionDate:01/17/1997 | PROOF DUE: 01/31/2011
EXTENSION: | ELEC/PROOF:[ ] | ELEC/PROOF: | CERT/WUC: | LAP, ETC: | LAPS LETTER:
RUSH LETTR: | RENOVATE: | RECON REQ: | TYPE: [ ]
Status: Approved

H E R E T O F O R E

FLOW: 167.9 acre-feet

SOURCE: Little Cottonwood Creek

COUNTY: Salt Lake

H E R E A F T E R

FLOW: 167.9 acre-feet

SOURCE: Quincy Mine Tunnel

COUNTY: Salt Lake COM DESC: Little Cottonwood Canyon

This change application is based on rights in Little Cottonwood Tanner Ditch, Cahoon and Maxfield Irrigation Company, Walker Ditch Company and Richards Irrigation Company. The rights are shown in the C. W. Morse Decree on Little Cottonwood Creek, Civil No. 4802, Dated June 16, 1910. The use of these rights is defined further by a statement of Water Users Claim No. 57-8973 entered in the proposed determination of water rights.

The balance of the rights will continue to be used for municipal purposes by Salt Lake City.

A contract has been made between Salt Lake City Corporation and Alta Peruvian Lodge and others for these users to divert up to 167.9 acre-feet of water annually (150,000 gpd) for domestic requirements of Alta Peruvian Lodge, incidental uses and for 13 homes.

POINT(S) OF DIVERSION ------>

Point Surface:
(1) S 234 ft E 102 ft from W4 cor, Sec 28, T 2S, R 1E, SLBM
Dvrting Wks: Little Cottonwood Tanner Ditch
Source:
(2) N 77 ft W 663 ft from E4 cor, Sec 29, T 2S, R 1E, SLBM
Dvrting Wks: Cahoon & Maxfield Ditch
Source:
(3) N 1363 ft W 1143 ft from E4 cor, Sec 29, T 2S, R 1E, SLBM
Dvrting Wks: Walker Ditch
Source:
(4) S 1800 ft E 707 ft from N4 cor, Sec 34, T 2S, R 1E, SLBM
Dvrting Wks: Richards Ditch
Source:
(5) N 2309 ft W 743 ft from E4 cor, Sec 11, T 3S, R 1E, SLBM
Dvrting Wks: Diversion Dam
Source:
(6) S 838 ft E 4512 ft from W4 cor, Sec 07, T 3S, R 2E, SLBM
Dvrting Wks: Murray City Power Plant
Source:

CHANGED AS FOLLOWS: (Click Location link for WRPLAT)

Point Surface:
(1) S 2950 ft W 480 ft from N4 cor, Sec 05, T 3S, R 3E, SLBM
Dvrting Wks:
Source:

Stream Alt?: No

PLACE OF USE ------>

CHANGED as follows:

--NW¼-- --NE¼-- --SW¼-- --SE¼--		--NW¼-- --NE¼-- --SW¼-- --SE¼--
|N N S S||N N S S||N N S S||N N S S|||		|N N S S||N N S S||N N S S||N N S S||
|W E W E||W E W E||W E W E||W E W E|||		|W E W E||W E W E||W E W E||W E W E||
	||Sec 05 T 3S R 3E SLBM	* : :X: ** : : : ** : : : ** : : : *|

NATURE OF USE ------>	SAME AS HERETOFORE
SUPPLEMENTAL to Other Water Rights: No	SUPPLEMENTAL to Other Water Rights: No
MUN: Salt Lake City USED 01/01 - 12/31	

PROTESTANTS

NAME: Jame C. Garside ADDR: 2077 East 1710 South Spanish Fork, UT 84660	NAME: Cahoon and Maxfield Irrigation Company ADDR: c/o Anton P. Rezac 5668 South Bullion Murray UT 84123
NAME: Robert J. Murdock et al ADDR: 2964 East 3135 South Salt Lake City UT 84109	NAME: Salt Lake County ADDR: c/o David E. Yocom (late protest) 2001 South State Street, #S3600 Salt Lake City UT 84190-1200
NAME: Harvey Stauffer ADDR: #8 Stauffer Lane Murray UT 84107	NAME: ADDR:

EXTENSIONS OF TIME WITHIN WHICH TO FILE PROOF

FILED: 04/27/2000	PUB BEGAN:	PUB ENDED:	NEWSPAPER:	
ProtestEnd:	PROTESTED: [Yes]	HEARNG HLD:	SE ACTION: [Approved]	ActionDate:07/20/2000 | PROOF DUE: 01/31/2005
FILED: 01/20/2005	PUB BEGAN:	PUB ENDED:	NEWSPAPER: No Adv Required	
ProtestEnd:	PROTESTED: [Yes]	HEARNG HLD:	SE ACTION: [Approved]	ActionDate:05/19/2005 | PROOF DUE: 01/31/2011

END OF DATA

PERUVIAN CONTRACT
UT DWR 57010010

(WARNING: Water Rights makes NO claims as to the accuracy of this data.) RUN DATE: 04/26/2007 Page 1

CHANGE: a16841 WATER RIGHT: 57-10010 CERT. NO.: AMENDATORY? No
BASE WATER RIGHTS: 57-10010
RIGHT EVIDENCED BY: C.W. Morse Decree, Civil #4802, Water Right No. 57-8973
CHANGES: Point of Diversion [X], Place of Use [X], Nature of Use [ ], Reservoir Storage [ ].

NAME: Salt Lake City Corporation
ADDR: Department of Public Utilities
1530 South West Temple
Salt Lake City UT 84115
REMARKS:

FILED: 06/24/1992 | PRIORITY: 06/24/1992 | ADV BEGAN: 04/15/1993 | ADV ENDED: | NEWSPAPER: Deseret News
ProtestEnd:05/29/1993 | PROTESTED: [Hear Hel] | HEARNG HLD: | SE ACTION: [Approved] | ActionDate:01/17/1997 | PROOF DUE: 01/31/2011
EXTENSION: | ELEC/PROOF:[ ] | ELEC/PROOF: | CERT/WUC: | LAP, ETC: | LAPS LETTER:
RUSH LETTR: | RENOVATE: | RECON REQ: | TYPE: [ ]
Status: Approved

H E R E T O F O R E

FLOW: 167.9 acre-feet

SOURCE: Little Cottonwood Creek

COUNTY: Salt Lake

H E R E A F T E R

FLOW: 167.9 acre-feet

SOURCE: Quincy Mine Tunnel

COUNTY: Salt Lake COM DESC: Little Cottonwood Canyon

This change application is based on rights in Little Cottonwood Tanner Ditch, Cahoon and Maxfield Irrigation Company, Walker Ditch Company and Richards Irrigation Company. The rights are shown in the C. W. Morse Decree on Little Cottonwood Creek, Civil No. 4802, Dated June 16, 1910. The use of these rights is defined further by a statement of Water Users Claim No. 57-8973 entered in the proposed determination of water rights.

The balance of the rights will continue to be used for municipal purposes by Salt Lake City.

A contract has been made between Salt Lake City Corporation and Alta Peruvian Lodge and others for these users to divert up to 167.9 acre-feet of water annually (150,000 gpd) for domestic requirements of Alta Peruvian Lodge, incidental uses and for 13 homes.

POINT(S) OF DIVERSION ------>

Point Surface:
(1) S 234 ft E 102 ft from W4 cor, Sec 28, T 2S, R 1E, SLBM
Dvrting Wks: Little Cottonwood Tanner Ditch
Source:
(2) N 77 ft W 663 ft from E4 cor, Sec 29, T 2S, R 1E, SLBM
Dvrting Wks: Cahoon & Maxfield Ditch
Source:
(3) N 1363 ft W 1143 ft from E4 cor, Sec 29, T 2S, R 1E, SLBM
Dvrting Wks: Walker Ditch
Source:
(4) S 1800 ft E 707 ft from N4 cor, Sec 34, T 2S, R 1E, SLBM
Dvrting Wks: Richards Ditch
Source:
(5) N 2309 ft W 743 ft from E4 cor, Sec 11, T 3S, R 1E, SLBM
Dvrting Wks: Diversion Dam
Source:
(6) S 838 ft E 4512 ft from W4 cor, Sec 07, T 3S, R 2E, SLBM
Dvrting Wks: Murray City Power Plant
Source:

CHANGED AS FOLLOWS: (Click Location link for WRPLAT)

Point Surface:
(1) S 2950 ft W 480 ft from N4 cor, Sec 05, T 3S, R 3E, SLBM
Dvrting Wks:
Source:

Stream Alt?: No

PLACE OF USE ------>

CHANGED as follows:

--NW¼-- --NE¼-- --SW¼-- --SE¼--		--NW¼-- --NE¼-- --SW¼-- --SE¼--
|N N S S||N N S S||N N S S||N N S S|||		|N N S S||N N S S||N N S S||N N S S||
|W E W E||W E W E||W E W E||W E W E|||		|W E W E||W E W E||W E W E||W E W E||
	||Sec 05 T 3S R 3E SLBM	* : :X: ** : : : ** : : : ** : : : *|

NATURE OF USE ------>	SAME AS HERETOFORE
SUPPLEMENTAL to Other Water Rights: No	SUPPLEMENTAL to Other Water Rights: No
MUN: Salt Lake City USED 01/01 - 12/31	

PROTESTANTS

NAME: Jame C. Garside ADDR: 2077 East 1710 South Spanish Fork, UT 84660	NAME: Cahoon and Maxfield Irrigation Company ADDR: c/o Anton P. Rezac 5668 South Bullion Murray UT 84123
NAME: Robert J. Murdock et al ADDR: 2964 East 3135 South Salt Lake City UT 84109	NAME: Salt Lake County ADDR: c/o David E. Yocom (late protest) 2001 South State Street, #S3600 Salt Lake City UT 84190-1200
NAME: Harvey Stauffer ADDR: #8 Stauffer Lane Murray UT 84107	NAME: ADDR:

EXTENSIONS OF TIME WITHIN WHICH TO FILE PROOF

FILED: 04/27/2000	PUB BEGAN:	PUB ENDED:	NEWSPAPER:	
ProtestEnd:	PROTESTED: [Yes]	HEARNG HLD:	SE ACTION: [Approved]	ActionDate:07/20/2000 | PROOF DUE: 01/31/2005
FILED: 01/20/2005	PUB BEGAN:	PUB ENDED:	NEWSPAPER: No Adv Required	
ProtestEnd:	PROTESTED: [Yes]	HEARNG HLD:	SE ACTION: [Approved]	ActionDate:05/19/2005 | PROOF DUE: 01/31/2011

END OF DATA

SALT LAKE – TOWN ALTA
WATER AMOUNT
MAY 9, 1997
HAIK VS ALTA - SALT LAKE CITY

AUG 12 1976

Mildred V. Higham
CITY RECORDER

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date 8/12/76
By RL Montgomery

INTERGOVERNMENTAL AGREEMENT

WATER SUPPLY AGREEMENT SALT LAKE CITY TO ALTA CITY

THIS AGREEMENT made and entered into as of the 12th day of August, 1976, by and between SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah, hereinafter CITY, and ALTA ~~CITY~~, a municipal corporation of the State of Utah, hereinafter ALTA.

WITNESSETH:

WHEREAS, Alta is a body corporate and politic of the State of Utah situated in Little Cottonwood Canyon, Salt Lake County, Utah established pursuant to the laws of the State of Utah for the purposes of furnishing municipal services, to the residents and developments within the boundaries of Alta City; and

WHEREAS, Alta represents that it is presently in compliance with the ordinances, rules and regulations of the Salt Lake City-County Health department and State and Federal regulatory agencies concerning sanitation water use and treatment, sewage disposal incident to the uses and developments and rules and regulations within the Salt Lake City watershed area; and

WHEREAS, City owns and/or controls the major portion of the primary waters of Little Cottonwood Canyon for the use and benefit of Salt Lake City residents, some of which, at this time, can be made available to Alta; and

WHEREAS, City and Alta desire to enter into an agreement for the supply of water to Alta in accordance herewith.

NOW, THEREFORE, in consideration of the premises, the parties agree as follows:

1. City agrees to make available to Alta for its use, as hereinafter described, the normal flow of raw, untreated water, not to exceed 265,000 gallons per day, eminating from either of the following locations, to-wit:

EXHIBIT A

Entrance to Bay City Mine.

1500 feet more or less West, and 400 feet more or less South from the South East Corner Section 32 T.2S., R.3E., S.L.B.& M.

The vector of the tunnel is in a Northeasterly direction.

Alternate Point of Diversion above the Snake Pit on Little Cottonwood Creek.

200 feet more or less East and 2950 feet more or less South from the Southeast Corner Section 32, T.2S., R.3E., S.L.B.& M.

2. If the Agreement between City and Alta Peruvian Lodge and others, dated May 20, 1976, is not terminated within one year from the date on which Alta first begins using water hereunder, the maximum amount of water to which Alta is entitled under Article 1 hereof, shall be reduced thereafter by 150,000 gallons per day.

3. Alta agrees to construct or have constructed, from said water sources and diversion points to the various users of water intended to be served within the city limits, all necessary pipelines, facilities, fixtures and appurtenances thereof, all of which shall be acquired or constructed at the sole cost of Alta, and Alta shall maintain and repair the same together with any tanks, pumps or other equipment and facilities necessary or incidental to the movement and/or treatment of the water from said points of diversion to the various users within Alta's city limits.

4. City shall have no obligation whatsoever to Alta or any of its users, lessees, assigns or grantees with regard to the construction, maintenance or repair of said facilities, and Alta agrees that the same will, at all times, be so maintained and policed as to prevent loss or waste of water from the distribution system.

5. Alta will install at its sole cost and to City specifications, all necessary meters and shut off valves so that City can measure and control the amount of water used by Alta and agrees not to use or allow the use of any water through said system without said metering devices attached. Alta agrees to convey to City said valves and facilities from the source to said shut off valves and meters, and thereafter City shall maintain and/or replace the same to and including said shut off valves.

6. City will at all times be provided with complete access to said facilities, valves and meters, and Alta agrees to obtain and deed to City all rights-of-way and easements deemed necessary for such access by City.

7. City shall, from time to time, read said meters and compute the amount of water used by Alta, which will be billed once each month at the then prevailing City water rates for water served inside City's limits as provided by the then current City ordinance. Alta agrees to pay said charge within 15 days after a statement is forwarded by City.

8. It is expressly understood and agreed that said pipelines shall not be extended to or supply water to any properties or facilities not within the present city limits of Alta without the prior written consent of City.

9. The uses of the water supplied hereunder shall be limited solely to domestic and commercial culinary purposes and uses incidental thereto, and it shall not be used for agricultural irrigation or sprinkling of any type.

10. Alta agrees to receive the water furnished hereunder by City "as is", with no representations by City as to quality or purity. City shall be under no obligation whatsoever to render said water fit or suitable for human consumption.

11. It is understood and agreed that City has prior statutory and contractural obligations to deliver water to its inhabitants, and its surplus water to firms and corporations in the canyon and elsewhere, and this Agreement is made only as to surplus waters in excess of City's needs and obligations, and if at any time and for any reason, in City's sole judgment, it is unable to furnish the water provided for by this Agreement, it may reduce the amount of water allowed hereunder or cancel and terminate this Agreement upon 30 days written notice by personally serving or mailing by certified or registered, written notice thereof to Alta City, at Alta, Utah, provided however, that the foregoing shall in no way prohibit City from assigning or transferring its obligations hereunder to another supplier or from making other arrangements for supplying water hereunder to Alta.

12. Alta recognizes City's need to protect its watershed and specifically agrees to be bound by and comply with all City water ordinances, applicable County ordinances, Salt Lake City-County Board of Health regulations and applicable State law. It is understood and agreed that City may immediately or after notice terminate this Agreement, without any liability whatsoever, for Alta's violation of any of the terms and conditions hereunder, or for Alta's failure or refusal within five (5) days after written notice to correct any Alta controllec or controllable condition violating, or to enforce violation against others within its city limits of, then in force City and/or County watershed ordinances or any sanitary regulation of the Salt Lake City-County Board of Health or State law.

13. Alta agrees that until the EPA 208 Study is complete there will be no additional users of water added to the system beyond those now in existence to whom water service is presently contemplated.

14. Neither this Agreement nor the benefits nor obligations hereunder are assignable by Alta without the prior written consent of City.

15. Alta agrees to indemnify, save harmless and defend City, its agents and employees, from and against any and all suits, legal proceedings, claims, mechanics liens, demands, costs and attorney's fees arising out of or by reason of Alta's construction, replacement and maintenance of said water lines and attendant facilities and use of said water obtained hereunder. Alta further agrees to maintain in force at its own expense during the life of this Agreement, a comprehensive general liability insurance policy with additional coverage for contractural, completed operations and products liability in the minimum amounts of $100,000/$300,000 for bodily injury and $50,000 for property damage, and naming City as an additional named insured for all risks involved hereunder.

IN WITNESS WHEREOF, the parties have caused this Agreement to

be executed as of the day and year first above written.

SALT LAKE CITY CORPORATION

By Ted L. Wilson
MAYOR

ATTEST:

Mildred V. Higham
CITY RECORDER

Town of ALTA ~~CITY~~

By William H. Fackrell
MAYOR

ATTEST:

~~CITY RECORDER~~
Acting Town Clerk

STATE OF UTAH)
: ss.
County of Salt Lake)

On the 12th day of August, 1976, personally appeared before me TED L. WILSON and MILDRED V. HIGHAM, who being by me duly sworn, did say that they are the MAYOR and CITY RECORDER, respectively, of SALT LAKE CITY CORPORATION, and that said instrument was signed in behalf of said corporation by authority of a motion of its Board of Commissio rs passed on the 12th day of August, 1976; and said persons acknowledged to me that said corporation executed the same.

Katherine L Bonnick
NOTARY PUBLIC, residing in
Salt Lake City, Utah

My Commission Expires:
1-8-79

STATE OF UTAH)
: ss.
County of Salt Lake)

On the 11th day of August, 1976, personally appeared before me William A. Leavitt and Jeffery L Anderson, who being by me duly sworn, did say that they are the MAYOR and ~~CITY~~ Acting town RECORDER, respectively, of ALTA CITY, and that said instrument was signed in behalf of said corporation by authority of a motion of its Board of Commissioners passed on the 14th day of March, 1976; and said persons acknowledged to me that said corporation executed the same.

Carol L Montgomery
NOTARY PUBLIC, residing in
Salt Lake City, Utah

CAROL L. MONTGOMERY NOTARY PUBLIC GRANT COUNTY

My Commission Expires:
10/13/77

AMENDMENT OF INTERGOVERNMENTAL
SALT LAKE CITY TO ALTA CITY WATER SUPPLY AGREEMENT

THIS AGREEMENT is made and entered into as of the 1st day of April, 1980, by and between SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah, hereinafter CITY, and the TOWN OF ALTA, a municipal corporation of the State of Utah, hereinafter ALTA.

WITNESSETH:

WHEREAS, on or about the 12th day of August, 1976, the City and Alta entered into an Intergovernmental Agreement for sale of water from Salt Lake City to Alta; and

WHEREAS, the parties are now desirous of amending paragraph 7 of said Agreement.

NOW, THEREFORE, in consideration of the premises, the parties agree to amend paragraph 7 of said agreement which shall read from inception of the Agreement as follows:

7. City shall, from time to time, read said meters and compute the amount of water used by Alta, which will be billed once each month at initially 12¢ per 100 cubic feet, which amount shall be reviewed once each year during the term hereof and may be raised or lowered at that time at the option of City by notifying Alta of said rate change in writing. Alta agrees to pay said water bill within 30 days after a statement is forwarded by City. Failure to pay said bill within said 30 days shall be grounds for cancellation of this agreement, and Alta agrees to pay City a reasonable attorney's fee and all costs and expenses for collection of any such outstanding bill.

Except as modified by the foregoing, said Agreement between the parties dated August 12, 1976, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement

to be executed as of the day and year first above written.

SALT LAKE CITY CORPORATION

By _____
MAYOR

ATTEST:

Mildred V. Higham
CITY RECORDER

TOWN OF ALTA

By _____
MAYOR

ATTEST:

_____

STATE OF UTAH)
: ss.
County of Salt Lake)

On the 1st day of April, 1980, personally appeared before me TED L. WILSON and MILDRED V. HIGHAM, who being by me duly sworn, did say that they are the MAYOR and CITY RECORDER, respectfully, of SALT LAKE CITY CORPORATION, and said persons acknowledged to me that said corporation executed the same.

Katherine L Baranicki
NOTARY PUBLIC, residing in
Salt Lake City, Utah

My Commission Expires:

1-8-83

STATE OF UTAH)
: ss.
County of Salt Lake)

On the 19th day of March, 1980, personally appeared before me WILLIAM H. LEAVITT and _____, who being by me duly sworn, did say that they are the MAYOR and _____, respectively, of ALTA CITY, and said persons acknowledged to me that said City executed the same.

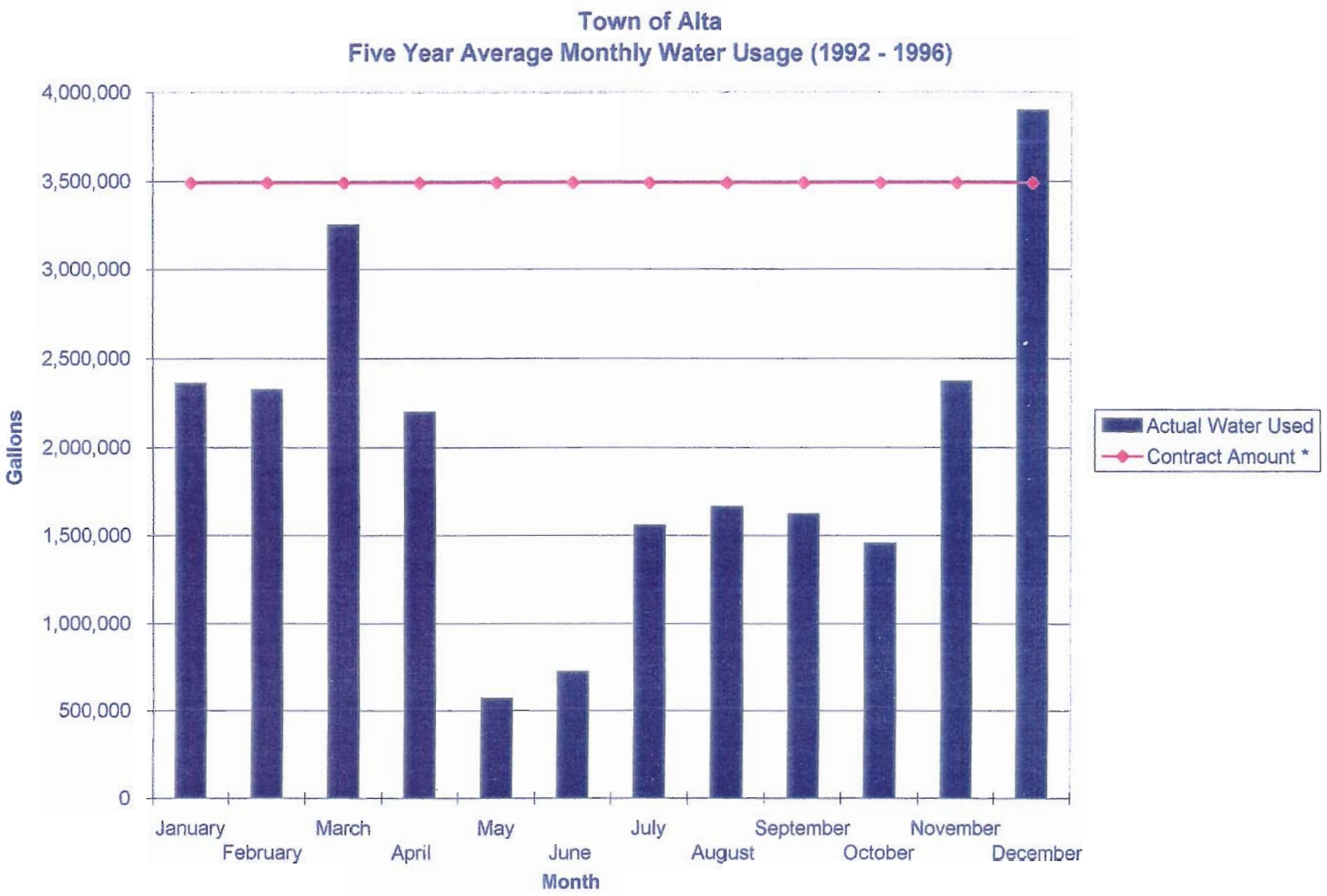
Sharon L Bennett
NOTARY PUBLIC, residing in
Salt Lake City, Utah

My Commission Expires:

January 23, 1984

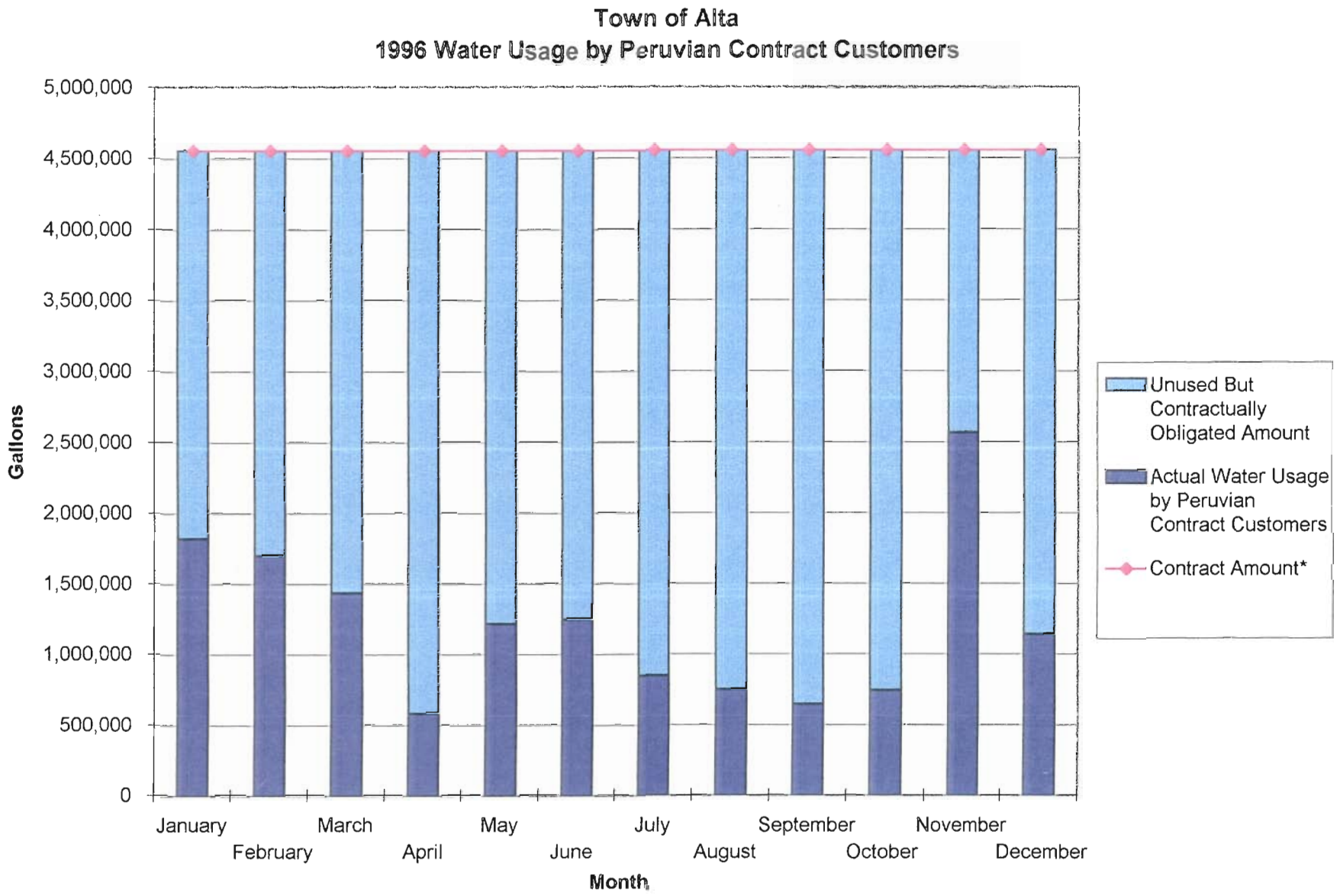
SALT LAKE - TOWN OF ALTA
WATER AMOUNT
MAY 9, 1997 CHART
HAIK VS ALTA - SALT LAKE CITY

Chart #1



* The contract amount is calculated as follows: 265,000 gal/day, less 150,000 gal/day allocated to the Peruvian Contract Customers, multiplied by 365 days, and divided by 12 months, equals 3.49 million gal/month.

Chart #2



* Contract amount based on Peruvian Contract, calculated as follows: 150,000 gal/day, multiplied by 365 days, divided by 12 months, equals 4.56 million gal/month.

Chart #3

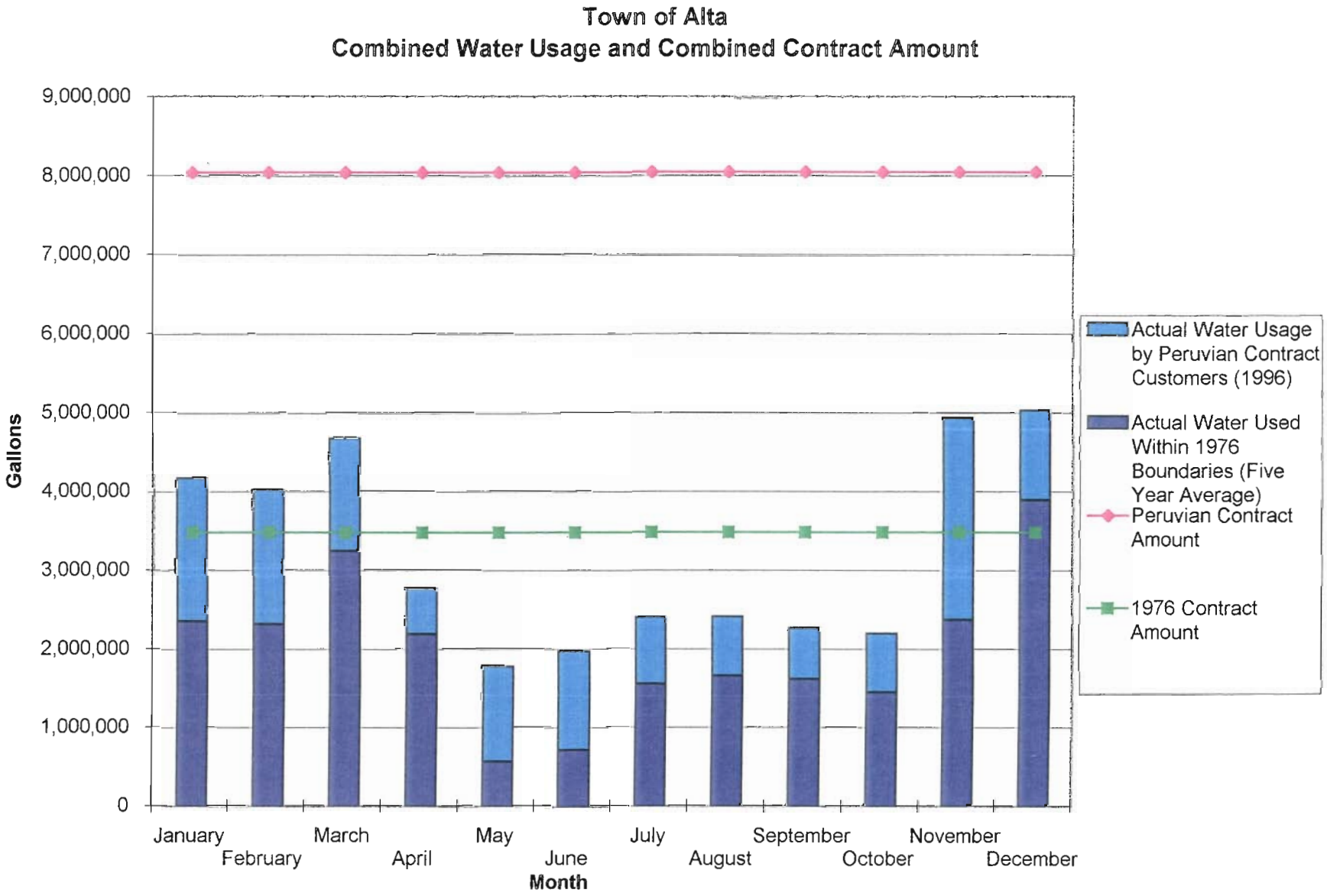

Town of Alta
Combined Water Usage and Combined Contract Amount
9,000,000
8,000,000
7,000,000
6,000,000
5,000,000
4,000,000
3,000,000
2,000,000
1,000,000
0
Gallons
January
February
March
April
May
June
July
August
September
October
November
December
Month
Actual Water Usage by Peruvian Contract Customers (1996)
Actual Water Used Within 1976 Boundaries (Five Year Average)
Peruvian Contract Amount
1976 Contract Amount

Chart #4

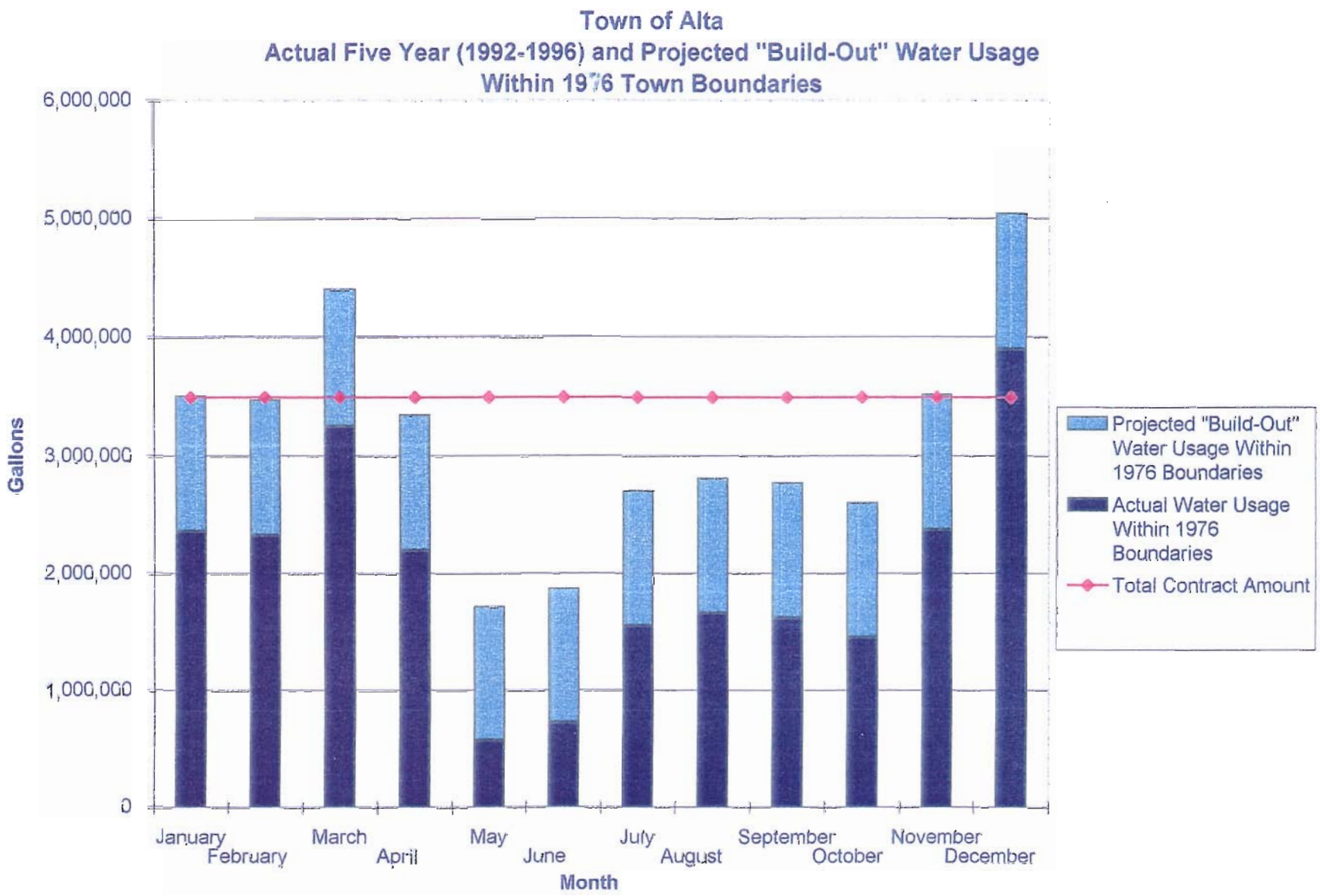

Town of Alta
Actual Five Year (1992-1996) and Projected "Build-Out" Water Usage Within 1976 Town Boundaries
6,000,000
5,000,000
4,000,000
3,000,000
2,000,000
1,000,000
0
Gallons
January
February
March
April
May
June
July
August
September
October
November
December
Month
Projected "Build-Out" Water Usage Within 1976 Boundaries
Actual Water Usage Within 1976 Boundaries
Total Contract Amount

Chart #5

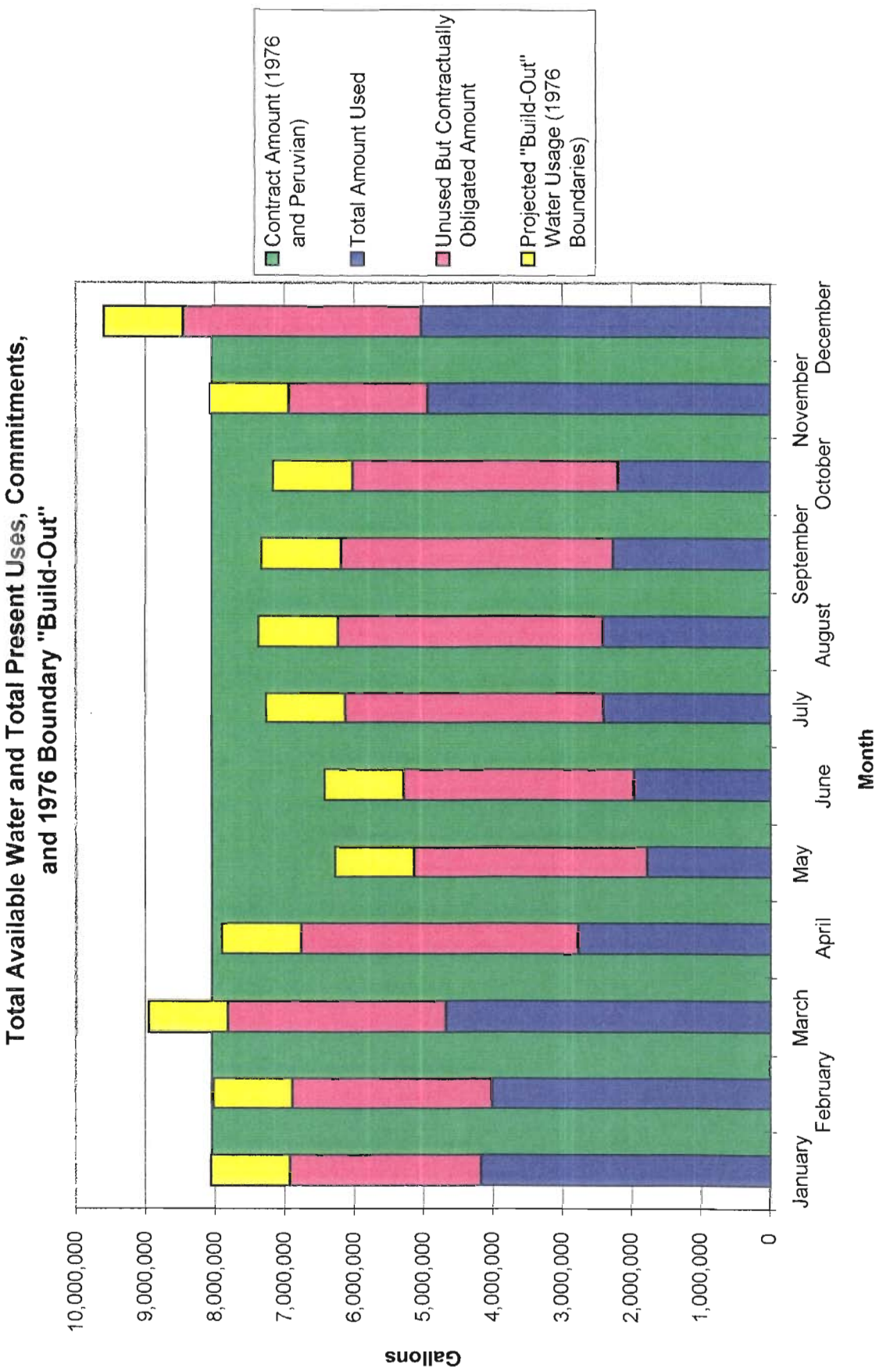
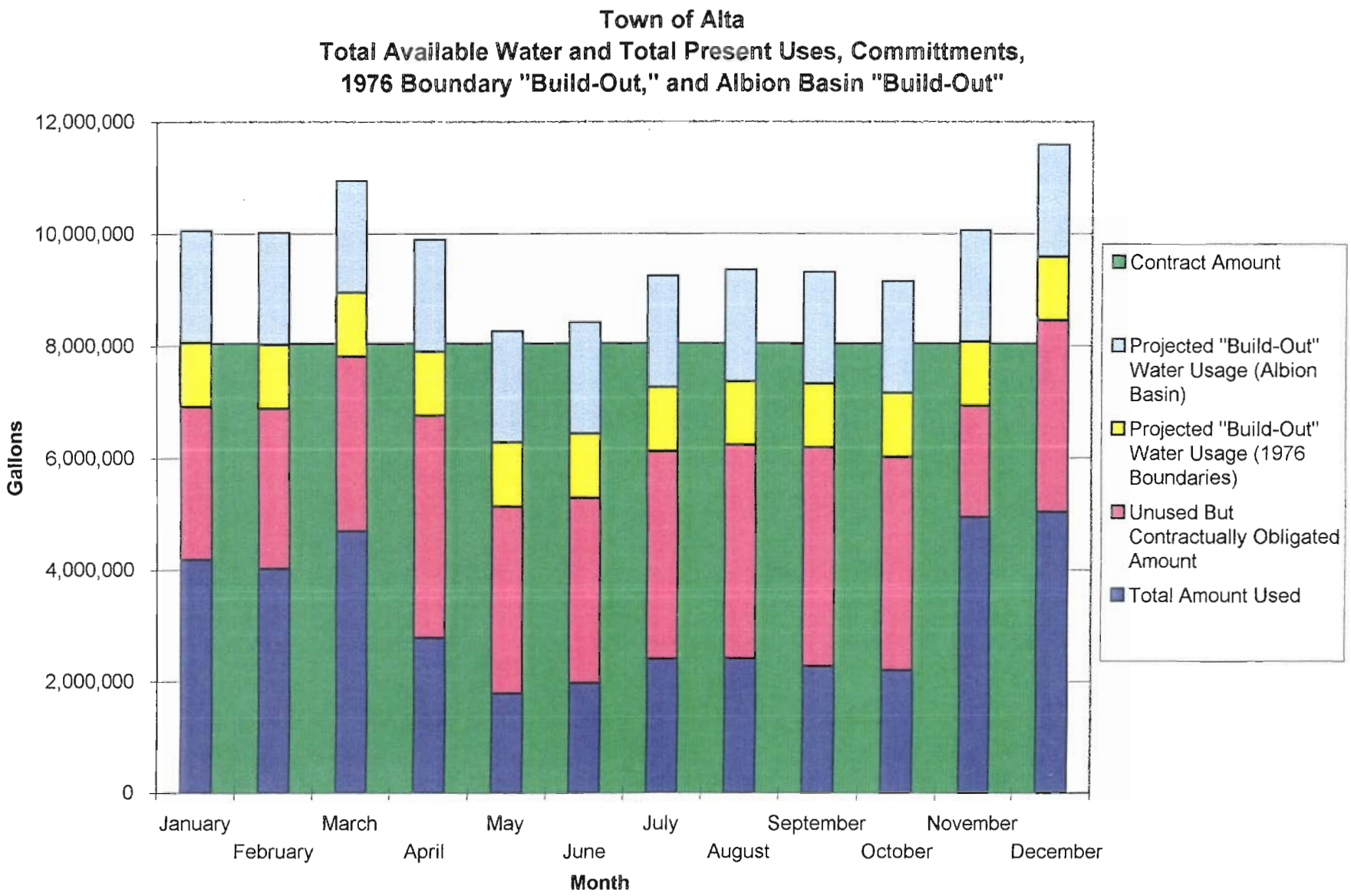

Town of Alta
Total Available Water and Total Present Uses, Commitments, and 1976 Boundary "Build-Out"
Contract Amount (1976 and Peruvian)
Total Amount Used
Unused But Contractually Obligated Amount
Projected "Build-Out" Water Usage (1976 Boundaries)
Gallons
10,000,000
9,000,000
8,000,000
7,000,000
6,000,000
5,000,000
4,000,000
3,000,000
2,000,000
1,000,000
0
January
February
March
April
May
June
July
August
September
October
November
December
Month

Chart #6


Town of Alta
Total Available Water and Total Present Uses, Committments,
1976 Boundary "Build-Out," and Albion Basin "Build-Out"
12,000,000
10,000,000
8,000,000
6,000,000
4,000,000
2,000,000
0
Gallons
January
February
March
April
May
June
July
August
September
October
November
December
Month
Contract Amount
Projected "Build-Out" Water Usage (Albion Basin)
Projected "Build-Out" Water Usage (1976 Boundaries)
Unused But Contractually Obligated Amount
Total Amount Used

SALT LAKE TOWN – ALTA
WATER SUPPLY AGREEMENT
1976

AUG 12 1976

Mildred V. Higham
CITY RECORDER

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date 8/12/76
By R L Montgomery

INTERGOVERNMENTAL AGREEMENT

WATER SUPPLY AGREEMENT SALT LAKE CITY TO ALTA CITY

THIS AGREEMENT made and entered into as of the 12th day of August, 1976, by and between SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah, hereinafter CITY, and ALTA ~~CITY~~, a municipal corporation of the State of Utah, hereinafter ALTA.

WITNESSETH:

WHEREAS, Alta is a body corporate and politic of the State of Utah situated in Little Cottonwood Canyon, Salt Lake County, Utah established pursuant to the laws of the State of Utah for the purposes of furnishing municipal services, to the residents and developments within the boundaries of Alta City; and

WHEREAS, Alta represents that it is presently in compliance with the ordinances, rules and regulations of the Salt Lake City-County Health department and State and Federal regulatory agencies concerning sanitation water use and treatment, sewage disposal incident to the uses and developments and rules and regulations within the Salt Lake City watershed area; and

WHEREAS, City owns and/or controls the major portion of the primary waters of Little Cottonwood Canyon for the use and benefit of Salt Lake City residents, some of which, at this time, can be made available to Alta; and

WHEREAS, City and Alta desire to enter into an agreement for the supply of water to Alta in accordance herewith.

NOW, THEREFORE, in consideration of the premises, the parties agree as follows:

1. City agrees to make available to Alta for its use, as hereinafter described, the normal flow of raw, untreated water, not to exceed 265,000 gallons per day, eminating from either of the following locations, to-wit:

EXHIBIT A

Entrance to Bay City Mine.

1500 feet more or less West, and 400 feet more or less South from the South East Corner Section 32 T.2S., R.3E., S.L.B.& M.

The vector of the tunnel is in a Northeasterly direction.

Alternate Point of Diversion above the Snake Pit on Little Cottonwood Creek.

200 feet more or less East and 2950 feet more or less South from the Southeast Corner Section 32, T.2S., R.3E., S.L.B.& M.

2. If the Agreement between City and Alta Peruvian Lodge and others, dated May 20, 1976, is not terminated within one year from the date on which Alta first begins using water hereunder, the maximum amount of water to which Alta is entitled under Article 1 hereof, shall be reduced thereafter by 150,000 gallons per day.

3. Alta agrees to construct or have constructed, from said water sources and diversion points to the various users of water intended to be served within the city limits, all necessary pipelines, facilities, fixtures and appurtenances thereof, all of which shall be acquired or constructed at the sole cost of Alta, and Alta shall maintain and repair the same together with any tanks, pumps or other equipment and facilities necessary or incidental to the movement and/or treatment of the water from said points of diversion to the various users within Alta's city limits.

4. City shall have no obligation whatsoever to Alta or any of its users, lessees, assigns or grantees with regard to the construction, maintenance or repair of said facilities, and Alta agrees that the same will, at all times, be so maintained and policed as to prevent loss or waste of water from the distribution system.

5. Alta will install at its sole cost and to City specifications, all necessary meters and shut off valves so that City can measure and control the amount of water used by Alta and agrees not to use or allow the use of any water through said system without said metering devices attached. Alta agrees to convey to City said valves and facilities from the source to said shut off valves and meters, and thereafter City shall maintain and/or replace the same to and including said shut off valves.

6. City will at all times be provided with complete access to said facilities, valves and meters, and Alta agrees to obtain and deed to City all rights-of-way and easements deemed necessary for such access by City.

7. City shall, from time to time, read said meters and compute the amount of water used by Alta, which will be billed once each month at the then prevailing City water rates for water served inside City's limits as provided by the then current City ordinance. Alta agrees to pay said charge within 15 days after a statement is forwarded by City.

8. It is expressly understood and agreed that said pipelines shall not be extended to or supply water to any properties or facilities not within the present city limits of Alta without the prior written consent of City.

9. The uses of the water supplied hereunder shall be limited solely to domestic and commercial culinary purposes and uses incidental thereto, and it shall not be used for agricultural irrigation or sprinkling of any type.

10. Alta agrees to receive the water furnished hereunder by City "as is", with no representations by City as to quality or purity. City shall be under no obligation whatsoever to render said water fit or suitable for human consumption.

11. It is understood and agreed that City has prior statutory and contractural obligations to deliver water to its inhabitants, and its surplus water to firms and corporations in the canyon and elsewhere, and this Agreement is made only as to surplus waters in excess of City's needs and obligations, and if at any time and for any reason, in City's sole judgment, it is unable to furnish the water provided for by this Agreement, it may reduce the amount of water allowed hereunder or cancel and terminate this Agreement upon 30 days written notice by personally serving or mailing by certified or registered, written notice thereof to Alta City, at Alta, Utah, provided however, that the foregoing shall in no way prohibit City from assigning or transferring its obligations hereunder to another supplier or from making other arrangements for supplying water hereunder to Alta.

12. Alta recognizes City's need to protect its watershed and specifically agrees to be bound by and comply with all City water ordinances, applicable County ordinances, Salt Lake City-County Board of Health regulations and applicable State law. It is understood and agreed that City may immediately or after notice terminate this Agreement, without any liability whatsoever, for Alta's violation of any of the terms and conditions hereunder, or for Alta's failure or refusal within five (5) days after written notice to correct any Alta controllec or controllable condition violating, or to enforce violation against others within its city limits of, then in force City and/or County watershed ordinances or any sanitary regulation of the Salt Lake City-County Board of Health or State law.

13. Alta agrees that until the EPA 208 Study is complete there will be no additional users of water added to the system beyond those now in existence to whom water service is presently contemplated.

14. Neither this Agreement nor the benefits nor obligations hereunder are assignable by Alta without the prior written consent of City.

15. Alta agrees to indemnify, save harmless and defend City, its agents and employees, from and against any and all suits, legal proceedings, claims, mechanics liens, demands, costs and attorney's fees arising out of or by reason of Alta's construction, replacement and maintenance of said water lines and attendant facilities and use of said water obtained hereunder. Alta further agrees to maintain in force at its own expense during the life of this Agreement, a comprehensive general liability insurance policy with additional coverage for contractural, completed operations and products liability in the minimum amounts of $100,000/$300,000 for bodily injury and $50,000 for property damage, and naming City as an additional named insured for all risks involved hereunder.

IN WITNESS WHEREOF, the parties have caused this Agreement to

be executed as of the day and year first above written.

SALT LAKE CITY CORPORATION

By Ted L. Wilson
MAYOR

ATTEST:

Mildred V. Higham
CITY RECORDER

Town of ALTA ~~CITY~~

By William H. Fackrell
MAYOR

ATTEST:

~~CITY RECORDER~~
Acting Town Clerk

STATE OF UTAH)
: ss.
County of Salt Lake)

On the 12th day of August, 1976, personally appeared before me TED L. WILSON and MILDRED V. HIGHAM, who being by me duly sworn, did say that they are the MAYOR and CITY RECORDER, respectively, of SALT LAKE CITY CORPORATION, and that said instrument was signed in behalf of said corporation by authority of a motion of its Board of Commissio rs passed on the 12th day of August, 1976; and said persons acknowledged to me that said corporation executed the same.

Katherine L Barnick
NOTARY PUBLIC, residing in
Salt Lake City, Utah

My Commission Expires:
1-8-79

STATE OF UTAH)
: ss.
County of Salt Lake)

On the 11th day of August, 1976, personally appeared before me William A. Leavitt and Jeffery L Anderson, who being by me duly sworn, did say that they are the MAYOR and ~~CITY~~ Acting town RECORDER, respectively, of ALTA CITY, and that said instrument was signed in behalf of said corporation by authority of a motion of its Board of Commissioners passed on the 14th day of March, 1976; and said persons acknowledged to me that said corporation executed the same.

Carol L Montgomery
NOTARY PUBLIC, residing in
Salt Lake City, Utah

CAROL L. MONTGOMERY NOTARY PUBLIC GRANT OF UTAH

My Commission Expires
10/13/77

AMENDMENT OF INTERGOVERNMENTAL
SALT LAKE CITY TO ALTA CITY WATER SUPPLY AGREEMENT

THIS AGREEMENT is made and entered into as of the 1st day of April, 1980, by and between SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah, hereinafter CITY, and the TOWN OF ALTA, a municipal corporation of the State of Utah, hereinafter ALTA.

WITNESSETH:

WHEREAS, on or about the 12th day of August, 1976, the City and Alta entered into an Intergovernmental Agreement for sale of water from Salt Lake City to Alta; and

WHEREAS, the parties are now desirous of amending paragraph 7 of said Agreement.

NOW, THEREFORE, in consideration of the premises, the parties agree to amend paragraph 7 of said agreement which shall read from inception of the Agreement as follows:

7. City shall, from time to time, read said meters and compute the amount of water used by Alta, which will be billed once each month at initially 12¢ per 100 cubic feet, which amount shall be reviewed once each year during the term hereof and may be raised or lowered at that time at the option of City by notifying Alta of said rate change in writing. Alta agrees to pay said water bill within 30 days after a statement is forwarded by City. Failure to pay said bill within said 30 days shall be grounds for cancellation of this agreement, and Alta agrees to pay City a reasonable attorney's fee and all costs and expenses for collection of any such outstanding bill.

Except as modified by the foregoing, said Agreement between the parties dated August 12, 1976, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement

to be executed as of the day and year first above written.

SALT LAKE CITY CORPORATION

By _____
MAYOR

ATTEST:

_____
CITY RECORDER

TOWN OF ALTA

By _____
MAYOR

ATTEST:

_____

STATE OF UTAH)
: ss.
County of Salt Lake)

On the 1st day of April, 1980, personally appeared before me TED L. WILSON and MILDRED V. HIGHAM, who being by me duly sworn, did say that they are the MAYOR and CITY RECORDER, respectfully, of SALT LAKE CITY CORPORATION, and said persons acknowledged to me that said corporation executed the same.

_____
NOTARY PUBLIC, residing in
Salt Lake City, Utah

My Commission Expires:

1-8-83

STATE OF UTAH)
: ss.
County of Salt Lake)

On the 19th day of March, 1980, personally appeared before me WILLIAM H. LEAVITT and _____, who being by me duly sworn, did say that they are the MAYOR and _____, respectively, of ALTA CITY, and said persons acknowledged to me that said City executed the same.

Thora L. Bennett
NOTARY PUBLIC, residing in
Salt Lake City, Utah

My Commission Expires:

January 23, 1984

SPECIAL SERVICE DISTRICT
TOA

Original Do Not Remove RECEIVED FEB 24 1984

RESOLUTION ESTABLISHING A SERVICE DISTRICT

3899714

RESOLUTION NO. 83-12

A RESOLUTION OF THE TOWN COUNCIL ESTABLISHING A SPECIAL SERVICE DISTRICT WITHIN THE CORPORATE LIMITS OF THE TOWN OF ALTA, EXCLUDING ONLY THE AREA ON THE WESTERN EDGE OF THE TOWN'S BOUNDARIES, SAID AREA WHICH IS ALSO INCLUDED WITHIN THE SALT LAKE COUNTY SERVICE AREA NO. 3 SNOWBIRD, BOUNDARY.

WHEREAS, Title 11, chapter 23, U.C.A., 1953, as amended, known as the "Utah Special Service District Act ", authorizes the establishment of municipal service districts; and

WHEREAS, said statute provides, among other things, that the legislature recognizes the duties of cities as instruments of State Government to meet adequately the needs of incorporated areas, and also recognizes that such areas should pay for the services provided; and

WHEREAS: The Alta Town Council has found and hereby delares that the public health, convenience and necessity require the establishmen of a Special Service District within the Town for the purpose of providing sewer services: and

WHEREAS: in a public hearing held February 10, 1983 the Alta Towr Council formally declared and adopted a resolution of its' intention to create a Municipal Service District primarily for the purpose of providing sewer services and other services necessary to the health, safety and welfare of the Townof Alta, and authorized by the, "Utah Special District Act", and

WHEREAS: on April 14, 1983, the Town of Alta held a public hearing and formally passed, approved and adopted the resolution establishing the Alta Special Service District, and

WHEREAS: no protests were received either orally or in writing on the creation of said Alta Special Service District or the services to be provided;

NOW THEREFORE, BE IT RESOLVED,by the Town Council of the Town of Alta, Salt Lake County, Utah as follows;

1. That pursuant to Chapter 23, Title 11, U.C.A., 1953, as amended, known as the "Utah Special Service District Act", a municipal service district is established and is known as the Alta Special Service District for the purpose of providing sewer services and other necessary services authorized by the "Act" to the hereinafter defined incorporated area of the Town of Alta excluding only the western

H0003330

TOWN OF ALTA
Alta, Utah 84092

Town of Alta Special Service District legal description as follows: Beginning at a point South 1576.8 feet and West 191.9 feet and South 10 58' West, 90 feet, more or less, from the Northeast Corner of Section 6, Township 3 South, Range 3 East, Salt Lake Base and Meridian, and running thence along the Northerly line of a 4-Rod State Highway Southwesterly along a 669.62 foot radius curve to the left a distance of 287.23 feet (long chord bears South 51 07'29" West 285.03 feet); thence South 38 46'11" West 312.77 feet; thence South 18 15' East 114.84 feet to the intersection with Line 3-2 of the Hellgate No. 2 Lode Mining Claim,No. 5282; thence South 67 20' East 300 feet to the center of Little Cottonwood Creek; thence North 18 18' East along center line of said creek 103.83 feet; thence North 58 39' East 32.76 feet; thence North 13 20' East 133.65 feet; thence North 47 56' East 67.27 feet; thence North 70 49' East 55.03 feet; thence North 38 29' East 96.64 feet; thence South 81 43' East 103.10 feet; thence North 59 50' East 145.62 feet; thence South 80 26' East 101.43 feet; thence North 64 36' East 102.88 feet; thence South 75 54' East 89.74 feet; thence North 13 35' West 51.42 feet; thence North 58 57' East 87.46 feet; thence North 84 54' East 57.22 feet; thence North 44 55' East 42.43 feet; thence South 56 58' East 27.46 feet; thence North 27 43' East 62.18 feet; thence South 67 35' East 44.38 feet; thence South 33 06' East 23.85 feet; thence South 82 12' East 36.35 feet; thence North 69 22' East 34.18 feet;

1600 feet, more or less; thence

(1)

BOOK 5527 PAGE 2662

H000332

thence North 47 38' East 59.46 feet; thence North 28 51' East 97.13 feet; thence North 15 07' East 44.43 feet; thence North 76 19' East 54 feet; thence North 53 53' East 68 feet; thence South 22 42' East 65 feet; thence South 42 36' East 73.70 feet; thence departing from the center line of Little Cottonwood Creek, South 15 42' East, 239 feet; thence South 65 33' West 550.52 feet to intersection with Hellgate No. 2 Mining Claim line, 4-1; thence South 66 37' East 35.28 feet to Corner No. 1 of Hellgate No. 2 Mining Claim; thence South 22 40' West 153.85 feet along an access road to intersection with Blackjack Mining Claim line, 2-1; thence North 71 45' East 574.2 feet; thence South 18 15' East 298.4 feet to the Corner No. 1 of Blackjack, M.S. 5288,; thence South 49 42' West 1620 feet, more or less, to intersection with the North side of Nina Lode Mining Claim No. 5897; thence North 71 49'18" East 1593.30 feet, more or less, to intersection of Line 3-4 of the Martha Lode Claim No. 5897; thence Southeasterly, along the Peruvian Ridge, 6600 feet, more or less, to Mt. Baldy and the Salt Lake County - Utah County Line; thence Easterly 4900 feet, more or less, along the Salt Lake County - Utah County Line to the East line of the West one-half of the West one-half, Section 9, Township 3 South, Range 3 East, Salt Lake Base and Meridian; thence Easterly 1300 feet, more or less, to the summit of Devil's Castle Peak; thence Southeasterly 2500 feet, more or less, along the Salt Lake County - Utah County Line to Bench Mark marked 10864, said point being approximately 300 feet Southwesterly from the Northeast Corner of Section 16, Township 3 South, Range 3 East, Salt Lake Base and Meridian; thence Northeasterly 5675 feet, more or less, along the Salt Lake County -

Utah County Line to intersection of Game Preserve Boundary and Drainage Divide between Little Cottonwood Canyon and Big Cottonwood Canyon; thence Northerly 2300 feet, more or less, along said Game Preserve Boundary and Drainage Divide to the summit of Mt. Tuscarora; thence Northwesterly 1000 feet, more or less, along the Game Preserve Boundary line and the Drainage Divide to the Summit of Mt. Wolverine; thence Westerly 1175 feet, more or less, along said Drainage Divide; thence Northwesterly 1000 feet, more or less, along said Drainage Divide; thence Northerly 2125 feet, more or less, along said Drainage Divide and Game Preserve Boundary line to intersection with North Section line of Section 4, near its Northeast Corner of Section 4, Township 3 South, Range 3 East, Salt Lake Base and Meridian; thence South 89 49' West 3915 feet, more or less, along Northern Boundary of said Section 4; thence North 67 05' West 720 feet, more or less, to a line 200 feet North of the North Line of Section 4, Township 3 South, Range 3 East, Salt Lake Base and Meridian; thence West 4570 feet, more or less, along said Line 200 feet North of the North Lines of Sections 4 and 5 of said Township and Range; thence South 1650 feet, more or less, to the South line of the old Alta Highway at a point South 1449.7 feet and East 1049.1 feet from the Northwest Corner of Section 5, Township 3 South, Range 3 East, Salt Lake Base and Meridian; thence South 81 30' West 267 feet; thence South 72 30' West 396 feet, thence South 87 00' West 600 feet, more or less, to the point of beginning.

00025527 Bk2664
KATIE L. DIXON
RECORDER
SALT LAKE COUNTY,
UTAH
FEB 2 8 33 AM '84
REQ OF Lawyers Title
$ [illegible] DEP
No fee
+ mic

H000334

TOA DDW
FEBRUARY 5, 2007
NO. 1

TOWN OF ALTA
P.O. BOX 8016
ALTA, UTAH
84092-8016
TEL. (801) 363-5105 / 742-3522
FAX. (801) 742-1006

February 5, 2007

RECEIVED
FEB 0 6 2007
Drinking Water

Kenneth H. Bousfield
Compliance Manager
Division of Drinking Water
P.O. Box 144830
Salt Lake City, Utah 84114-4830

RE: Antimony Variance: Annual Update/February, 2007

Dear Mr. Bousfield,

At the March 3, 2006 Drinking Water Board Meeting, The Town of Alta was granted a two year variance for Antimony. A stipulation in the variance was that the Town of Alta report back to the Division of Drinking Water annually during the variance period.

Here are the steps that the Town has taken to comply with the variance.

1. In September of 2005 The Division of Drinking Water approved a Running Annual Average Sampling plan for Antimony compliance for the Town of Alta. This sampling plan is an attempt to see if compliance with the 6 ppb mcl is possible through blending and averaging. We have been using this sampling plan for over 16 months now and while it was initially promising, we were not able to meet the 6 ppb mcl. Our current running annual average is 9.3 ppb. We will continue this sampling plan at least through 2007. The Antimony free water that the Town blends with comes from a source owned by Salt Lake County Service Area #3. The Service Area is planning to re-develop this source in 2007. This may allow for a longer blending period for the Town and bring them into compliance.

2. We have been testing a Point of Use filter system that has had promising results. It is a Krystal Pure KR15 R/O system. It has been in service in a residence for over a year. We have been sampling for Antimony from this system monthly and the results are still non-detect.

3. Antimony compliance through full scale treatment is still an option. We have verified that Granular Ferric Hydroxide with ph adjustment will work. It is the best available technology of the many that we have tested. The Town would need some type of grant assistance and our water users could see a substantial water

rate increase for this option to be viable. The Town of Alta remains on the FSRF project priority list but we are not ready to ask for funding at this time.

4. We have conducted a literature search for any significant improvements in technology or more detailed, current toxicity studies. There is really nothing new to help us here although there is an interesting mine discharge study that shows little effect of on Rainbow Trout from Antimony.

I'm attaching pertinent documents relating to this first year of the variance. These include sample results, water rights correspondence, and miscellaneous letters. Mr. Hanson will be attending the Drinking Water Board meeting on March 1st to help answer any questions that the Drinking Water Board may have.

Thank you for your assistance and interest in our unique situation.

Sincerely,

Tom Pollard, Mayor

Keith J. Hanson
Water System Manager
Town of Alta

Rec. 4/14/06

State of Utah

Department of Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF DRINKING WATER
Kevin W. Brown, P.E.
Director

Drinking Water Board
Anne Erickson, Ed.D., *Chair*
Myron Bateman, *Vice-Chair*
Ken Bassett
Daniel Fleming
Jay Franson, P.E.
Helen Graber, Ph.D.
Paul Hansen, P.E.
Laurie McNeill, Ph.D.
Dianne R. Nielson, Ph.D.
Petra Rust
Ron Thompson
Kevin W. Brown, P.E.
Executive Secretary

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

April 12, 2006

The Honorable Tom Pollard, Mayor
Town of Alta
P.O. Box 8016
Alta, Utah 84092-8016

Dear Mayor Pollard:

Subject: Antimony Variance for Water System #18049

The Drinking Water Board met on March 3, 2006 to consider your application for a Variance for Antimony. Following a staff presentation and consideration of comments, the Board voted in favor of granting the Variance for a period not to exceed two years with the requirement that your water system report the status of any research, testing, blending results or literature reviews conducted during the 24 month period, and to submit the report annually to Division of Drinking Water staff. Such report should be submitted on or before January 31, 2007 and January 31, 2008.

During the discussion of this agenda item, the Board did indicate their willingness to consider a renewal application for Antimony in 2008, if it is necessary.

The Board further directed that the Town of Alta report on the status of water rights in its first report. We interpret this to mean: 1) That Alta would show that Salt Lake City owns the water rights in the Little Cottonwood Canyon area; 2) the Town of Alta uses water by agreement with Salt Lake City; and 3) a statement by an appropriate representative from Salt Lake City indicating their restrictions on Alta's use of Salt Lake City's water.

Should you have any questions concerning this correspondence, please feel free to call Kenneth Bousfield, of my staff, at (801) 536-4207.

Sincerely,

DRINKING WATER BOARD

Kevin W. Brown, P.E.
Executive Secretary

KHB:jsy

cc: Salt Lake Valley Health Department

U:\dr_water\COMPLI\jyee\wp\Compli\Ken B\Alta AntimonyVariance.doc

TOWN OF ALTA
P.O. BOX 8016
ALTA, UTAH
84092-8016
TEL. (801) 363-5105 / 742-3522
FAX. (801) 742-1006

August 11, 2006

Kevin Brown, P.E.
Executive Secretary
Division of Drinking Water
150 North 1950 West
Salt Lake City, Utah 84114

Dear Mr. Brown,

Pursuant to your letter dated April 12, 2006 regarding the antimony variance for our water system, LeRoy W. Hooton, Jr. , Director of Salt Lake City Department of Public Utilities has responded to the Division of Drinking Water request for a report on the status of water rights in the Town of Alta. I have enclosed a copy of that letter addressed to Mayor Tom Pollard for your reference and ask that you forward the same on to the Drinking Water Board.

If you or any member of the Board should have any questions, comments or need further clarification on this matter, please don't hesitate to contact me in the Town Office at 801-363-5105.

Thank you.

Cordially,

Kate Black
Town Clerk
Town of Alta

Cc: Mayor Tom Pollard
Keith Hanson, Service Area #3

Enclosures

LEROY W. HOOTON, JR.
DIRECTOR

SALT LAKE CITY CORPORATION
DEPARTMENT OF PUBLIC UTILITIES
WATER SUPPLY AND WATERWORKS
WATER RECLAMATION AND STORMWATER

ROSS C. "ROCKY" ANDERSON
MAYOR

August 8, 2006

The Honorable Tom Pollard
Mayor, Town of Alta
P.O. Box 8016
Alta, Utah 84092-8016

Re: Town of Alta Water Supply

Dear Mayor Pollard:

We understand the Town of Alta is working with the Utah Division of Drinking Water, Drinking Water Board (the "Board"), to obtain a variance related to the antimony levels and timeline for implementation established by the State of Utah. As part of this variance, the Board has requested a statement from Salt Lake City regarding restrictions inherent in the Town's water supply.

Alta obtains 100% of its drinking water from Salt Lake City, pursuant to that certain Water Supply Agreement between Salt Lake City and the Town, dated August 12, 1976, as amended (the "Contract"). Under the terms of the Contract, Alta may take water only from the following two sources: (i) the Bay City Mine, and (ii) a diversion point above the Snake Pit on Little Cottonwood Creek, as more particularly specified in the Contract. In addition, the Town may, under the terms of an MOU entered into between Salt Lake City and the Town on August 15, 2005, take water under limited circumstances and conditions from a tunnel on the J.P. Lode Mining Claim specified as a source under a water supply contract between Salt Lake City and Salt Lake County Service Area # 3. Use of water from Service Area #3 is on a temporary basis only, in connection with a pilot project to determine the feasibility of blending water from an alternate source to reduce the concentration of antimony in Alta's water supply. The MOU contemplated that, if the pilot project proved successful, the parties would explore the feasibility of allowing water use from such alternative source on a more permanent basis.

Alta has no right to purchase water from Salt Lake City from any source other than as described above. Under Salt Lake City's watershed ordinance, the City may not expand the existing Contract. The ordinance does allow for a change in the source (which is the legal basis for the temporary MOU). However, the ordinance expressly prohibits the drilling of wells as new water sources.

1530 SOUTH WEST TEMPLE, SALT LAKE CITY, UTAH 84115
TELEPHONE: 801-483-6900 FAX: 801-483-6818
WWW.SLCGOV.COM

Please contact me if you have any questions regarding Alta's sources of water supply.

Sincerely,

LeRoy W. Hooton, Jr.,
Director

LWH:JN

Cc: Chris Bramhall – Deputy City Attorney
file

TOA DDW
FEBRUARY 5, 2007
NO. 2

TABLE 3.7: TOXICITY VALUES FOR ANTIMONY IN FRESHWATER FISH (values in mg/L)

Species	Endpoint	Value	Comments	Ref.
Oreochromis mossambicus	96-hr LC_{50}	35.5	• 3-day-old larvae	1
Rainbow Trout	28-d LC_{50}	0.580		2
Rainbow Trout	28-d LC_{50}	0.660		3
Fathead Minnow	96-hr LC_{50}	21.9	• embryo larval test	4
Fathead Minnow	28-d CV	1.6	• embryo larval test	4

1. Lin and Hwang (1998), 2. Birge (1978), 3. Birge *et al.* (1980), 4. Kimball (unpublished).

TABLE 3.8: TOXICITY VALUES FOR ANTIMONY IN INVERTEBRATES (values in mg/L)

Species	Endpoint	Value	Comments	Ref.
Daphnia magna	48-hr LC_{50}	530		1
Daphnia magna	64-hr LC_{50}	19.8	• Antimony trichloride	2
Daphnia magna	48-hr LC_{50}	9	• Antimony potassium tartarate	3
Daphnia magna	48-hr LC_{50}	18.8 12.1	• Unfed • Fed	4
Daphnia magna	28-d CV	5.4	• Life cycle test	4

1. LeBlanc (1980), 2. Anderson (2000), 3. Bringman and Kuhn (1959), 4. Kimball (unpubl.).

Suspended solids are in the range of 5 mg/L. Since the suspended solids in mine effluents can serve as absorptive surfaces for elements such as antimony (Section 2.4.3), the solids could act to reduce effluent toxicity. The importance of this effect will depend upon the adsorptive properties of the solids present in the effluent.

rate increase for this option to be viable. The Town of Alta remains on the FSRF project priority list but we are not ready to ask for funding at this time.

4. We have conducted a literature search for any significant improvements in technology or more detailed, current toxicity studies. There is really nothing new to help us here although there is an interesting mine discharge study that shows little effect of on Rainbow Trout from Antimony.

I'm attaching pertinent documents relating to this first year of the variance. These include sample results, water rights correspondence, and miscellaneous letters. Mr. Hanson will be attending the Drinking Water Board meeting on March 1st to help answer any questions that the Drinking Water Board may have.

Thank you for your assistance and interest in our unique situation.

Sincerely,

Tom Pollard, Mayor

Keith J. Hanson
Water System Manager
Town of Alta

Rec. 4/14/06

State of Utah

Department of Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF DRINKING WATER
Kevin W. Brown, P.E.
Director

Drinking Water Board
Anne Erickson, Ed.D., *Chair*
Myron Bateman, *Vice-Chair*
Ken Bassett
Daniel Fleming
Jay Franson, P.E.
Helen Graber, Ph.D.
Paul Hansen, P.E.
Laurie McNeill, Ph.D.
Dianne R. Nielson, Ph.D.
Petra Rust
Ron Thompson
Kevin W. Brown, P.E.
Executive Secretary

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

April 12, 2006

The Honorable Tom Pollard, Mayor
Town of Alta
P.O. Box 8016
Alta, Utah 84092-8016

Dear Mayor Pollard:

Subject: Antimony Variance for Water System #18049

The Drinking Water Board met on March 3, 2006 to consider your application for a Variance for Antimony. Following a staff presentation and consideration of comments, the Board voted in favor of granting the Variance for a period not to exceed two years with the requirement that your water system report the status of any research, testing, blending results or literature reviews conducted during the 24 month period, and to submit the report annually to Division of Drinking Water staff. Such report should be submitted on or before January 31, 2007 and January 31, 2008.

During the discussion of this agenda item, the Board did indicate their willingness to consider a renewal application for Antimony in 2008, if it is necessary.

The Board further directed that the Town of Alta report on the status of water rights in its first report. We interpret this to mean: 1) That Alta would show that Salt Lake City owns the water rights in the Little Cottonwood Canyon area; 2) the Town of Alta uses water by agreement with Salt Lake City; and 3) a statement by an appropriate representative from Salt Lake City indicating their restrictions on Alta's use of Salt Lake City's water.

Should you have any questions concerning this correspondence, please feel free to call Kenneth Bousfield, of my staff, at (801) 536-4207.

Sincerely,

DRINKING WATER BOARD

Kevin W. Brown, P.E.
Executive Secretary

KHB:jsy

cc: Salt Lake Valley Health Department

U:\dr_water\COMPLI\jyee\wp\Compli\Ken B\Alta AntimonyVariance.doc

TOWN OF ALTA
P.O. BOX 8016
ALTA, UTAH
84092-8016
TEL. (801) 363-5105 / 742-3522
FAX. (801) 742-1006

August 11, 2006

Kevin Brown, P.E.
Executive Secretary
Division of Drinking Water
150 North 1950 West
Salt Lake City, Utah 84114

Dear Mr. Brown,

Pursuant to your letter dated April 12, 2006 regarding the antimony variance for our water system, LeRoy W. Hooton, Jr. , Director of Salt Lake City Department of Public Utilities has responded to the Division of Drinking Water request for a report on the status of water rights in the Town of Alta. I have enclosed a copy of that letter addressed to Mayor Tom Pollard for your reference and ask that you forward the same on to the Drinking Water Board.

If you or any member of the Board should have any questions, comments or need further clarification on this matter, please don't hesitate to contact me in the Town Office at 801-363-5105.

Thank you.

Cordially,

Kate Black
Town Clerk
Town of Alta

Cc: Mayor Tom Pollard
Keith Hanson, Service Area #3

Enclosures

LEROY W. HOOTON, JR.
DIRECTOR

SALT LAKE CITY CORPORATION
DEPARTMENT OF PUBLIC UTILITIES
WATER SUPPLY AND WATERWORKS
WATER RECLAMATION AND STORMWATER

ROSS C. "ROCKY" ANDERSON
MAYOR

August 8, 2006

The Honorable Tom Pollard
Mayor, Town of Alta
P.O. Box 8016
Alta, Utah 84092-8016

Re: Town of Alta Water Supply

Dear Mayor Pollard:

We understand the Town of Alta is working with the Utah Division of Drinking Water, Drinking Water Board (the "Board"), to obtain a variance related to the antimony levels and timeline for implementation established by the State of Utah. As part of this variance, the Board has requested a statement from Salt Lake City regarding restrictions inherent in the Town's water supply.

Alta obtains 100% of its drinking water from Salt Lake City, pursuant to that certain Water Supply Agreement between Salt Lake City and the Town, dated August 12, 1976, as amended (the "Contract"). Under the terms of the Contract, Alta may take water only from the following two sources: (i) the Bay City Mine, and (ii) a diversion point above the Snake Pit on Little Cottonwood Creek, as more particularly specified in the Contract. In addition, the Town may, under the terms of an MOU entered into between Salt Lake City and the Town on August 15, 2005, take water under limited circumstances and conditions from a tunnel on the J.P. Lode Mining Claim specified as a source under a water supply contract between Salt Lake City and Salt Lake County Service Area # 3. Use of water from Service Area #3 is on a temporary basis only, in connection with a pilot project to determine the feasibility of blending water from an alternate source to reduce the concentration of antimony in Alta's water supply. The MOU contemplated that, if the pilot project proved successful, the parties would explore the feasibility of allowing water use from such alternative source on a more permanent basis.

Alta has no right to purchase water from Salt Lake City from any source other than as described above. Under Salt Lake City's watershed ordinance, the City may not expand the existing Contract. The ordinance does allow for a change in the source (which is the legal basis for the temporary MOU). However, the ordinance expressly prohibits the drilling of wells as new water sources.

1530 SOUTH WEST TEMPLE, SALT LAKE CITY, UTAH 84115
TELEPHONE: 801-483-6900 FAX: 801-483-6818
WWW.SLCGOV.COM

Please contact me if you have any questions regarding Alta's sources of water supply.

Sincerely,

LeRoy W. Hooton, Jr.,
Director

LWH:JN

Cc: Chris Bramhall – Deputy City Attorney
file

TOA DDW
FEBRUARY 5, 2007
NO. 2

TABLE 3.7: TOXICITY VALUES FOR ANTIMONY IN FRESHWATER FISH (values in mg/L)

Species	Endpoint	Value	Comments	Ref.
Oreochromis mossambicus	96-hr LC_{50}	35.5	• 3-day-old larvae	1
Rainbow Trout	28-d LC_{50}	0.580		2
Rainbow Trout	28-d LC_{50}	0.660		3
Fathead Minnow	96-hr LC_{50}	21.9	• embryo larval test	4
Fathead Minnow	28-d CV	1.6	• embryo larval test	4

1. Lin and Hwang (1998), 2. Birge (1978), 3. Birge *et al.* (1980), 4. Kimball (unpublished).

TABLE 3.8: TOXICITY VALUES FOR ANTIMONY IN INVERTEBRATES (values in mg/L)

Species	Endpoint	Value	Comments	Ref.
Daphnia magna	48-hr LC_{50}	530		1
Daphnia magna	64-hr LC_{50}	19.8	• Antimony trichloride	2
Daphnia magna	48-hr LC_{50}	9	• Antimony potassium tartarate	3
Daphnia magna	48-hr LC_{50}	18.8 12.1	• Unfed • Fed	4
Daphnia magna	28-d CV	5.4	• Life cycle test	4

1. LeBlanc (1980), 2. Anderson (2000), 3. Bringman and Kuhn (1959), 4. Kimball (unpubl.).

Suspended solids are in the range of 5 mg/L. Since the suspended solids in mine effluents can serve as absorptive surfaces for elements such as antimony (Section 2.4.3), the solids could act to reduce effluent toxicity. The importance of this effect will depend upon the adsorptive properties of the solids present in the effluent.